

Proceedings

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1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

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4 CARLOS OAXACA, HALIBUL ALAM : 13-CV-02698 (ENV) (MDG)
5 AND JUAN ESPINAL, :
6 Plaintiffs, :
7 -against- : United States Courthouse
8 HUDSON SIDE CAFE INC. : Brooklyn, New York
9 (d/b/a "ZACK'S PIZZA AND :
10 PAPO'S CHICKEN"), MOHAMMAD :
11 SAIN AND PERU KHAN : February 24, 2015
12 Defendants. : 10:33 a.m.
13 - - - - - X

14 TRANSCRIPT OF BENCH TRIAL

15 BEFORE THE HONORABLE MARILYN GO

16 UNITED STATES DISTRICT MAGISTRATE JUDGE

17 A P P E A R A N C E S:

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Proceedings

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Proceedings

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1 (Whereupon, the case was called prior; opening
2 statements occurred, but not reported. The following took
3 place in open court:)

4 THE COURT: All right. Just as a matter of
5 housekeeping, I had noted at our last pretrial -- the final
6 pretrial conference that there were no objections to any of
7 the exhibits offered in the exhibit list of -- except for the
8 pretrial order, but just to confirm that there are no dispute,
9 I asked the parties to exchange the exhibits; that's been
10 done, and I do have copies of the pre-marked exhibits.

11 Now, I want to confirm, again, that there are no
12 objections to these exhibits.

13 MR. ANDROPHY: Plaintiffs have no objections to
14 defendant's exhibits.

15 MR. MOULINOS: Same with defendant, Your Honor.

16 THE COURT: So they've all been marked, and they are
17 all admitted to the extent that they are offered as part of
18 this trial.

19 Now, I know you have one witness who has some
20 personal matters that he needs to attend to, so we will take
21 the defendant's first witness now.

22 MR. MOULINOS: Thank you. May I call to the stand
23 Mr. Kabir, please.

24 THE COURT: Come and sit in the witness seat right
25 here.

Proceedings

4

1 **M O H A M M E D K A B I R,**

2 called by The Defendant, having been
3 first duly sworn, was examined and testified
4 as follows:

5 THE DEPUTY CLERK: Would you state your name for the
6 record?

7 THE WITNESS: Mohammed S. Kabir.

8 THE DEPUTY CLERK: Thank you.

9 THE COURT: Would you spell your last name, please?

10 THE WITNESS: K-A-B-I-R; "B" as in "boy".

11 THE COURT: You may be seated.

12 THE WITNESS: Thank you.

13 THE COURT: You may proceed.

14 DIRECT EXAMINATION

15 BY MR. MOULINOS:

16 Q. Good morning, Mr. Kabir.

17 A. Good morning.

18 Q. Are you a shareholder of Hudson Side Cafe, Incorporated?

19 A. No, I'm not.

20 Q. Are you in way connected with Hudson Side Cafe,
21 Incorporated.

22 A. No. I'm not connected with it.

23 Q. Are you a defendant in this case?

24 A. No, I'm not.

25 Q. Did there come a time that you met a gentleman by the name

Proceedings

5

1 of Halibul Islam, also known as Habibul Alam?

2 A. Can I stand up here?

3 THE COURT: Sure.

4 THE WITNESS: Thank you very much first to say to
5 give me the floor first in this case because I have a personal
6 matter, and I'm dearly glad for all of the parties and the
7 opposition, anyone that's here.

8 And his question, I'm going to make it clear, Mr.
9 Habibul Alam, I met him in 2009, beginning of 2009, because I
10 was moved to --

11 BY MR. MOULINOS:

12 Q. Well, let me ask you the questions, Mr. Kabir, so we do
13 this in an orderly way. Okay. Are you related to Mr. Alam
14 in any way?

15 A. No. I'm not any relation with him because I don't have no
16 relation with him.

17 Q. In 2009, would you please give us a brief description of
18 how you met Mr. Alam?

19 A. So 2009, in February, I moved in Sunnyside in 40th Street
20 in Queens Boulevard -- 4-0. And that time, I was going for
21 walk in my working place, and when I get out by the subway at
22 40th Street, then I seen him on the fruit vendoring cart
23 there, and I used to stop by often there, and I buy the fruit.

24 And as a native, he come from my country, then I was
25 talking in my personal and anything -- like I was talking with

Proceedings

6

1 him, and that's why I know him.

2 Q. Is Mr. Alam in the courtroom today?

3 A. Yes. He's in the middle in the blue yellow-colored jacket
4 and the black color.

5 Q. Okay. Now, beginning 200, what other -- how often would
6 you see Mr. Alam?

7 A. Almost like everyday in the summertime when he's selling
8 the fruit; almost like everyday. When I come back from my
9 work, then I see him.

10 Q. When you say "see him", would he have a stand? Would he
11 have a cart? Would he have sidewalk -- where would he be; what
12 would he be doing?

13 A. He was exactly under the subway, he has a fruit vendoring
14 cart -- not in the cart, it's like cart, work cart.

15 Q. Okay. So you would see him --

16 A. It's like a van I think.

17 THE COURT REPORTER: It's like a "what"?

18 THE WITNESS: It's like a four-wheel van. He sell
19 the fruit on the van under the subway.

20 BY MR. MOULINOS:

21 Q. And when you say "selling fruit", what do you mean by
22 "fruit"?

23 A. Fruit. All kinds of fruit like a strawberry, watermelon,
24 the fruit.

25 Q. Inside the train station you mean?

Proceedings

7

1 A. No. No. Under the train. Under the subway.

2 Q. Under the subway?

3 THE COURT: It is this an elevated subway?

4 THE WITNESS: It is on Queens Boulevard, but the --

5 THE COURT: Is the subway raised?

6 THE WITNESS: Yes. The subway goes on there, but it
7 is under that.

8 BY MR. MOULINOS:

9 Q. So he would be on the sidewalk of the street?

10 A. It is not really on the sidewalk. The sidewalk is
11 different. I don't know what you call it because the subway
12 goes on the street, and he sits under the like -- on the
13 subway track.

14 THE COURT: And are there roads?

15 THE WITNESS: Roads, both sides.

16 THE COURT: On either side of the tracks?

17 THE WITNESS: Both sides.

18 THE COURT: And then there's the center strip, and
19 then he's in the center strip under the tracks?

20 THE WITNESS: Exactly. Exactly. Yes.

21 THE COURT: Okay.

22 THE WITNESS: The road goes both ways, and he's the
23 center point like in the subway.

24 BY MR. MOULINOS:

25 Q. So where he was located, was he exposed to the elements or

Proceedings

8

1 was he covered through a room of some sort?

2 A. No. It was open.

3 Q. Open space?

4 A. Yes.

5 Q. Okay. So how often would see you see him beginning 2009?

6 A. I seen him a lot. I cannot say exactly -- I did not
7 count, but I seen him a lot because most of the time, every
8 week I go home, then, I almost like three to four times, I
9 bought the fruit from him.

10 Q. Okay. And how long did this conversation, purchasing of
11 fruits, last overtime?

12 A. I didn't understand your question.

13 Q. Since 2009, how often -- how long would you see him
14 overtime?

15 A. It's early -- it was beginning of 2012, winter, and until
16 he was here.

17 Q. Before we get to the here, let's see what you and him
18 discussed, spoke about -- so give us a little bit of a flavor
19 -- when you purchased fruits from him and you said you had
20 conversations, give us the flavor of some of the
21 conversations.

22 A. It's really -- when I stop by there when I have time like
23 when I come back from work, then when I have time when I seen
24 him, most of the time, I spend like five to 10 minutes with
25 him; like two, three minutes, five minutes until I bought the

Proceedings

9

1 fruit, and I did my conversation like with myself and himself,
2 although, sometime I may question about him, his family and my
3 family like a friend.

4 So then I did share with him about his, and I share with
5 myself, also. So it is like finally a year later, it was
6 going like a very good friend or something. Sometimes I share
7 with him most important something, also, my family, also.

8 Q. While you had these conversation, did Mr. Alam ever
9 describe any past business affiliations?

10 A. Yes, he did.

11 Q. Would you please tell us the sum and substance?

12 A. This happened like when I started talking with him that
13 time, he didn't say anything, but after like a couple of
14 months, he said to me, like he has a business. He own a
15 business with his nephew, his own nephew, and it is -- I
16 believe he said it is in Park Avenue somewhere.

17 And when he opened the business with his nephew and his
18 friend, one of the friend was with him, they both was a screw
19 up with -- from his nephew, and because the nephew took the
20 business from them, and then just like -- I don't want to say
21 that kind of sentence, but it's like me -- like the guy,
22 nephew, he's seat with him does him in like that.

23 MR. ANDROPHY: Objection to the this whole answer as
24 hearsay.

25 THE COURT: It's sustained.

Proceedings

10

1 BY MR. MOULINOS:

2 Q. Did he mention who his partner was?

3 A. No. At that time, I do not know.

4 Q. However, he did mention that he was in business previously
5 together --

6 A. Exactly.

7 MR. ANDROPHY: Objection, again, on the hearsay.

8 THE WITNESS: He was in the catering business.

9 THE COURT: It's overruled.

10 BY MR. MOULINOS:

11 Q. It was in the catering business you said?

12 A. Yes. He used to work in the catering section somewhere in
13 Park Avenue.

14 Q. Now, so was there any further conversation about going
15 into this business or in any way?

16 A. Sometime he offered me, he's say to me, if you have any
17 good chance because I already get problem with my nephew, but
18 now I am working here, but some -- if I have any chance to
19 make a business or do business, I will do it. If you have
20 anything, let me know.

21 Q. And what did you say to that?

22 A. Then I said, I'll let you know if you have any chance,
23 anything, if I know something, then I'll let you know.

24 Q. Now, from 2009 all the way to 2012, did you suggest to him
25 in any way that there is some business available?

Proceedings

11

1 A. No. I did not say nothing.

2 Q. Then what happened in 2012 if anything.

3 A. In 2012 when the winter started, then I didn't see him a
4 long time, but one day I came from my work in front of my
5 house, when I came in front my house, he was standing there,
6 he was standing like that, and I asked him, Halibul, why are
7 you here? He said he just came in the school, and my -- close
8 to my house has a school. He want to pick up his son or
9 daughter. That's what he say. Maybe son or daughter he say.
10 He want to pick him up. That's why he was just standing here.

11 And then I was standing here like around another 10
12 minutes, 10, 15 minutes, I was talking with him. In the
13 meantime I said, why are you not working, I didn't see you
14 anymore? Then he said, I don't have no work anymore because
15 winter time, I cannot work outside, so now I'm looking for
16 something to do. If you know something, let me know. And
17 then I said, okay, I have to rush. I'm going home. So I just
18 finished my work. Well, I'll let you know anything I have.

19 Q. And when was this conversation about in the year 2012?

20 A. It is was exactly -- that I cannot say because I don't
21 need to remember that, and it was March or April of 2012. It
22 is almost like winter finished almost that time.

23 Q. And did there come a time after that that you saw him
24 again?

25 A. Sorry?

1 Q. Did you see Mr. Alam any time after that meeting with the
2 school picking up of the children?

3 A. No. I didn't see him anymore.

4 Q. Did there come a time that you realized that there's some
5 business for sale or subleasing or something of that nature?

6 A. Yes, I do. Alam, when he told me about it -- actually, in
7 this thing, I'm going to tell you, Alam, I know him from 2009
8 and until this it's 2012, he been to me a very close friend,
9 and I know him and I treat him as my friend or my brother, and
10 I have a -- when I heard that his nephew did -- cheating with
11 him, then all I was trying to help him, and I keep in my mind,
12 if I have a chance -- as I told him, I explained to him, if
13 any time, if I have any chance to do for you, I'll do for you,
14 but I didn't promise you. I cannot tell you, yes, I will do
15 it, but if I heard something, I'll let you know.

16 And then when I -- and in the meantime, he gave me his
17 cell phone number; I gave him cell phone number. And when I
18 met him like in 2012, in February, and by my house, then he
19 was really looks like he was upset because he doesn't have the
20 work, and it's hard. And then I said, okay, Alam, if I have
21 anything, I'll let you know. Any problem, let me know.

22 Then after that, couple weeks or maybe months later, I
23 heard that Hudson Side Cafe, I introduced myself, my brother,
24 he is one of the partner of this business, and when I get my
25 baby couple of weeks, I was at my brother's house, and then

1 most of the time, I had that house going on with the business
2 because my wife, 2012, I got another baby, so I lived together
3 with my brother.

4 So then most of the time, my brother talking about they
5 are losing money, they cannot handle the business, they have a
6 lot of problem. So then that time from my brother I had that
7 they wanted to sell this business or they if get some party
8 to do that, they wanted to do it. This is the first time I
9 heard about the Hudson Side Cafe and about this matter.

10 Q. And did there come a time that you communicated anything
11 of that sort to Mr. Alam?

12 A. Yes, I did.

13 Q. Would you please tell us what you --

14 A. Yes. When I heard that this is the thing that they want
15 to give us -- they want to sell this business. The cannot
16 continue business because they are losing money. Then I call
17 Alam and I offer Alam, Alam's own business came out in my
18 mind, and I know that guys. They are completely clear, and
19 they don't have no problem, so if you want to buy this
20 business so you can see that business.

21 Then he reply to me, he is not able to buy this business
22 because he doesn't have no money because he got -- and he
23 said, I have another case in the court, so I don't have no
24 money. I lost all the money. I invest money in all of them.
25 So I don't have no money that I can buy the business.

1 So I said, okay, so we're going to think about the
2 alternative if you have anything, if you save it. He said,
3 okay. Give me a chance, brother. So I said what. He said,
4 okay, give me a chance to operate this business. I said, how
5 are you going to do that? Because at that time, honestly, I
6 don't know even how they do it, that -- I didn't know.

7 Then I called him and he offered me. Then I spoke to my
8 brother, and my brother he spoke with his partner and
9 everybody, and they say okay. So we can sit down, how we can
10 do that because we are not able to do business.

11 So then Alam -- and I called Alam. Alam, you can go on
12 the side, the business it's still running there. You go
13 there. You see first the location and the business policy,
14 how they are doing. Keep your eyes on it, and keep going --
15 checking up, if you have time, morning, evening, any time when
16 they are open. You go there and check that out, and if you
17 like it, then let me know.

18 And he went there -- I never seen him because after he
19 called me, I never go there again. I don't know if he been
20 there or not, but he said to me, he been there morning,
21 evening, and daytime and many, many times within 15 days, and
22 then he said he is interested to take the business if they
23 rent it. And I said, okay, then I'm going to talk to them,
24 and then I asked my brother, and they said, okay. Let's do
25 it.

Proceedings

15

1 Q. During this period of time, did you meet or know in any
2 way Mr. Juan Espinal or Mr. Carlos Oaxaca?

3 A. No. I'm not. I do not know them.

4 Q. So did you communicate with you brother and other people
5 in the Hudson Cafe place that Mr. Alam is interested in some

6 --

7 A. Yes, I did.

8 Q. And what happened next?

9 A. And, then, my brother, he was doing in class, like
10 computer class, course for the IT, and he said, brother, I
11 cannot handle this thing I am busy with that, and I am driving
12 taxi, I cannot go there most of the time. So if you have time
13 so talk to the people and set it up on a schedule and sit down
14 with them, and how you can do that just help me out, and tell
15 them and my partner about how if they agree just help them out
16 to get out from there.

17 Q. You mentioned Mr. Paru. Are you referring Mr. Paru Khan
18 who is a defendant in this case?

19 A. Yes.

20 Q. This gentleman to my right?

21 A. Yes.

22 Q. Okay. And then what happened next, was there a meeting?

23 A. Yes. Yes. And then when he say -- Alam called me -- he
24 been to the store a couple times with his friend. That time,
25 still, I don't know who was his friend or who goes with him,

Proceedings

16

1 and he said, I been there. We are very satisfied with the
2 business location, and --

3 MR. ANDROPHY: Objection. Hearsay.

4 MR. MOULINOS: Thanks what he said.

5 THE COURT: It's not admitted for the truth. I'll
6 permit it, but it's not admitted for the truth of the
7 statement.

8 THE WITNESS: And then -- can I continue?

9 MR. MOULINOS: Yes, please.

10 THE WITNESS: Thank you. So then he called me, and I
11 said, okay --

12 BY MR. MOULINOS:

13 Q. He "Mr. Alam" or somebody else called?

14 A. No. Alam called me.

15 Q. Alam.

16 A. And then I passed -- was to the Alam.

17 THE COURT: Was that Alam's statement you were saying
18 that he was satisfied with the business?

19 THE WITNESS: Alam, Mr. Alam.

20 THE COURT: Yeah. But just before the objection, was
21 that Alam's statement? I'm sorry.

22 THE WITNESS: Alam statement. Yea. Alam didn't --

23 BY MR. MOULINOS:

24 Q. The judge wants to know what Mr. Alam said to you whether
25 he was satisfied with the business or not?

Proceedings

17

1 A. That's what I'm explaining. Yes. That's what I'm
2 explaining.

3 THE COURT: I'll permit the statement. I'm --

4 THE WITNESS: So when he went there --

5 MR. MOULINOS: The judge is talking, please.

6 THE COURT: I'm overruling the objection. I'm sorry.
7 I misunderstood.

8 MR. ANDROPHY: Okay.

9 THE WITNESS: And when he called me, then my first
10 question was to him: So you know what, like, if you want to
11 do this business how are you going to handle it? Why are you
12 satisfied with this place? And so he said, he was laughing,
13 and he said, brother, I went there, and it is a really good
14 location and neither is better than this and good location, I
15 can keep the continued business because I have the food
16 business experience, number one.

17 Number two, I ask him completely one question: I
18 said why are you interested in about the business? Then he
19 said, when he went there, that Hudson Side Cafe has some
20 worker they made some food for the other customers in front of
21 them. They were watching what how they make this food.

22 And my -- Hudson Side Cafe, one of the employees,
23 make the food for them without gloves.

24 BY MR. MOULINOS:

25 Q. Without "what"?

Proceedings

18

1 A. Without gloves.

2 Q. Gloves?

3 A. Yes. And they said it was most specifically they said a
4 chicken, grilled chicken salad. That's what he explained it.
5 And without gloves, he made the salad, and then the customer
6 refused the food. He said, I don't want to take this food
7 because you made this without gloves. How you did that?

8 And then he said, this is the way they make the food.
9 They cannot -- continue the business. So we know we can
10 progress. We got the problem. They say they cannot do that.
11 There's the problem they cannot do that business.

12 Q. Who is "they"? Or meaning the owners Hudson Cafe?

13 A. I'm sorry.

14 Q. You mentioned the word "they" could not continue this
15 business.

16 A. Hudson Side Cafe.

17 Q. The employees --

18 A. No. Employees, however, they make this salad, the Hudson
19 Side Cafe cannot keep this business continue because they are
20 totally wrong way they made it. I was standing there about
21 15, 20 minutes, they did not even ask me may I help or
22 something. I said, okay, you have a good point. If you can
23 do that, I can go for work for you.

24 Q. So the point that I think you're making is that Mr. Alam
25 was sure he would improve the business.

Proceedings

19

1 A. Exactly.

2 MR. ANDROPHY: Objection. Objection to --

3 THE COURT: It's overruled. Please don't lead the
4 witness, and please don't make speeches. What happens in
5 these proceedings is that the attorney can ask you questions,
6 and you'll answer the question that's asked by the attorney.

7 THE WITNESS: Thank you.

8 THE COURT: So rephrase, counselor.

9 BY MR. MOULINOS:

10 Q. So please continue the conversation you had with Mr. Alam
11 regarding his interest in this business of Hudson Side Cafe.

12 A. Yes. When he finished that, then I said, okay, if you
13 interested about this business, then it's for my -- as a
14 friend, for his interest and my brother's interest, I was in
15 the middle person now.

16 So I gave him another two weeks. I said, see that,
17 another two weeks. If you feel better, if you think, yes, you
18 want to take this business, after two weeks, talk to me, call
19 me, but right now, whatever you seen, what whatever you sent
20 me, I don't know because you see little bit more time. If you
21 have confidence, if you know that, yes, you can do that, then
22 you let me know.

23 Q. And what happened then?

24 A. Then after another two weeks -- actually, it was three
25 weeks past, then he called me, yes. He want to sit down with

Proceedings

20

1 like the partner and anyone, Hudson Side Cafe, he want to talk
2 to the. I said, okay. I'm going there. I'm going to talk to
3 them. I'm going to call them, and we can sit down about it,
4 but you asking to pay them or do that or how you're going to
5 do that, and I'm going to talk in front of them how they want
6 to do that.

7 Q. And was there a meeting, if any, ever set-up?

8 A. There was the first meeting, and there was me and Paru and
9 Alam -- and now I know him, this guy, he was there.

10 Q. You're referring to Mr. Juan Espinal?

11 A. That's the first time I meet with him.

12 THE COURT: Who is this? Can you describe the person
13 you're pointing to?

14 THE WITNESS: So he's the blue shirt and the glass
15 --

16 THE COURT: With the striped -- blue shirt with the
17 stripes in it?

18 THE WITNESS: Exactly. Yea. That's the first time I
19 meet with him. I never seen him.

20 THE COURT: Okay.

21 THE WITNESS: I never seen him in the past --

22 THE COURT: And is that gentleman Mr. Espinal?

23 THE WITNESS: Yes.

24 THE COURT: Okay. Thank you.

25 BY MR. MOULINOS:

Proceedings

21

1 Q. And by the way, you referred yourself as a middle man.

2 Were you ever paid for anything here?

3 A. Who pay?

4 Q. You. Did anybody pay you for any services?

5 A. No.

6 Q. Did you receive any money from anybody for --

7 A. No. No.

8 Q. -- engaging in this --

9 A. In this matter, a single thing I did not -- I did not
10 receive -- even for this matter, I already explained Alam, I
11 am the middle person, now. My brother is on one side; you are
12 on the other side. I do not even want to handle with any
13 case, you handle it with them. That I make it clear.

14 Q. So was there a first meeting where Mr. Alam and you and
15 others met?

16 A. Uh-huh.

17 Q. Would you please tell us clearly who appeared at the first
18 meeting and where it took place?

19 A. There was first meeting Mr. Alam and him -- at that time,
20 I know his name. He told me it's Carlos, but I don't know his
21 name it's still Espinal or something else. I know him as
22 Carlos, and that he told me his name is Carlos, and I meet
23 with him in the Hudson Side Cafe in the basement and with Paru
24 Khan.

25 Q. Okay. And please tell us what happened in that meeting?

1 A. That meeting, the first time I was -- I would say like I
2 asked Paru, Paru, what do you want because you are the partner
3 of this business, and then my brother's side because you are
4 going to give this business to them because you spend money
5 for the business. In business money, you know how to do the
6 business because how are you going to operate.

7 Then Paru then asked them \$4,000 a month, the rent, and
8 it's not rent, like \$4,000 they give from them to Hudson Side
9 Cafe to operate this business, and that's Paru Khan asking
10 for, and all the rent, the store rent, and all the utility,
11 they will pay.

12 Q. Who's "they"?

13 A. Alam and Espinal.

14 Q. And so tell us what else happened.

15 A. And then Alam said, no, my brother, this is my pastime,
16 I'm coming here, and you know the business, your business is
17 going down, so to make this business improve, we need more
18 time. So we got to take this business, but we cannot do it
19 like right away, we cannot pay you that much money. So this
20 business is not doing good, so I think we cannot do better,
21 but we will consider it later, but, now, give me a break.

22 So I say, what do you want? He said, \$3,000. I said, no.
23 It's not 3,000, it's not 4,000. Go in the middle. It's
24 3,500.

25 Q. So what was the understanding about the 3,500?

1 A. What do you mean?

2 Q. Was this a sum of money that was to be paid on top of all
3 the expenses or something else?

4 A. Oh, no. That was like every month, they're going to pay
5 him \$3,500.

6 Q. Who is "him"?

7 A. The Hudson Side Cafe, Paru -- I mean Hudson Side Care.
8 And they're going to may pay Hudson Side Cafe \$3,500, and they
9 will pay all the rent to the landlord and to the other expense
10 for what they need, plus they agreed to pay all the inventory,
11 whatever Hudson Side Cafe had.

12 Q. Was there any understanding regarding the profits of the
13 business?

14 A. The 3,500?

15 Q. No. Was there any understanding or discussion regarding
16 the profits for the business for the month?

17 A. Oh, 3,500, only they're going to take, give it to them,
18 and the rest of money, they say we can make good money from
19 here. So we can make good money, so they stop the money. No
20 profit. They're going to give it to them, but the rest of the
21 money is for them.

22 Q. Who's "them"?

23 A. Alam and Espinal.

24 Q. Okay. And what else transpired at that first meeting?

25 A. And there was at all the first meeting, it was like

Proceedings

24

1 it was deep. So then I said, okay, keep -- continue to think
2 about it -- then have any problem, and they talk to their
3 partner if they all agree and, also, then call me, and then
4 we'll sit down again how we can keep continuing.

5 Q. Was there a follow-up meeting of any sort?

6 A. The next meeting, we -- I remember that the next time, we
7 also meet with the same -- it was in the month or the end of
8 the month, we sit down in the Burger King because Paru Khan,
9 he called his partner and take the permission about that, and
10 now him and my brother and me, Carlos, and Juan Espinal and
11 Alam, we sit down in the Burger King in the same 40th Street
12 -- in between maybe it's 40 and the 41 in the Burger King in
13 Queens Boulevard.

14 (Whereupon, there was a brief pause in the
15 proceedings; thereafter, court resumed as follows:)

16 MR. MOULINOS: Should I continue, Judge?

17 THE COURT: Yes. Go ahead.

18 BY MR. MOULINOS:

19 Q. You said Burger King; you mean a physical chain --

20 A. It was in Burger King between 40 and 41 in Queens
21 Boulevard, and it's close to his --

22 Q. Who is "his"?

23 A. Like Alam working there when he sell the fruit.

24 Q. Close to fruit stand?

25 A. Very close, exactly.

Proceedings

25

1 Q. Is the fruit stand close to the location of the business
2 that Mr. Alam had?

3 A. No. No. No. This is not close to his business, no.

4 Q. But Burger King of the meetings is close to his home?

5 A. Yes. It was most convenient for him -- me because I live
6 in 40th Street. He works in 40th Street, and Paru he live in
7 Queens Boulevard and 43rd or 42nd. I don't now. It was more
8 convenient, that's why we call the meeting there.

9 Q. Is there any reason why the meeting took place in Burger
10 King instead of the location of the business?

11 A. That's the reason I said it was more convenient for
12 everybody to come there. For me, it was in the evening time,
13 after I finish work, we cannot anywhere because we are
14 retired. So it's make that very convenient for everybody.

15 Q. This meeting took place during what month in the year of
16 2012 if you recall?

17 A. Most possible, it was in May. It was in May.

18 Q. In 2012?

19 A. Yes.

20 Q. So please now describe for us what transpired at that
21 meeting at Burger King.

22 A. And then all the deals that we was talking with Mr. Alam
23 and Espinal and Paru and that -- oh, that other guy, he was
24 there, too.

25 Q. Who, Mr. Sain?

Proceedings

26

1 A. Yes. He was there, too. And my brother, him, him, and
2 them two.

3 THE COURT: Okay.

4 BY MR. MOULINOS:

5 Q. When you say "him, him" --

6 A. Like Paru and Mr. Sain.

7 Q. Mr. Khan; Mr. Sain; your brother --

8 A. My brother, me.

9 Q. And anybody else from the defendants' side?

10 A. No. No one else.

11 Q. And from the plaintiffs' side?

12 A. But Espinal and Alam.

13 Q. Okay. Was Mr. Carlos Oaxaca anywhere throughout all this
14 period?

15 A. I do not -- I do not have no idea about him at the
16 meeting.

17 Q. Okay. He was not in any part of the meeting?

18 A. No. No. Not at all.

19 Q. By the way before today, have you ever met this gentleman?

20 A. No. I never seen him. I never met him. I never know him.

21 Q. So please go back and tell us what transpired at that
22 meeting at Burger King?

23 A. At that meeting, whatever we discussed at the Hudson Side
24 Cafe in the basement in the same place, that's what we
25 described in front of him, and my brother and him and

1 everybody was there.

2 Q. Do not say "him". Please describe the name.

3 A. Mr. Alam.

4 Q. There's no "him" around here.

5 A. Paru Khan and Mr. Alam and me.

6 Q. Okay.

7 A. We was -- spoke about it, what about the offer, mean like
8 Alam offer and what about Paru offer. Everything we discussed
9 in front of them, and if they are agree about it, then they
10 can make the deal to do that.

11 Q. So what was the outcome?

12 A. And then they said -- okay. So for six months, they was
13 agreeable at the \$3,500, and Mr. Alam said six months, I have
14 to take time to progress this business because this is the
15 losing business. So six months later, we're going to consider
16 and we're going to see what's going on.

17 Six months later, we're going to pay you 4,000, but right
18 now they give me a break 3,000. All the partners were angry,
19 and they said, okay, take this business, keep it working, and
20 go. We all expect you're going to do better, but you can take
21 the six months, and you're going to give us 3,500.

22 Q. When you say 3,500, what do you exactly mean? Who's
23 paying who and for what purpose?

24 A. This \$3,500 that Alam and Carlos Espinal, they're going to
25 pay for the Hudson Cafe.

1 Q. And get what in exchange?

2 A. So they're going to operate this business, but all the
3 business they're going to operate and they -- what about the
4 sale, and that doesn't matter, forfeit a loss, it doesn't
5 matter. They're going to pay Hudson Side Cafe \$3,500 straight
6 and all the rent and the utility.

7 Q. And was there any discussion at all about any security or
8 any --

9 A. Yes. It has. It has like -- they're going to pay like
10 three months advance like 3,500 times three. It's like
11 10,500, and then I says 500, forget about. Make it \$10,000 --
12 \$10,000 deposit and the inventory, plus, one month rent like
13 the \$3,500.

14 Q. And what happened to that?

15 A. And then like weeks or two weeks after, Alam called me. I
16 wanted -- to do it. Okay. Come. He went to my working place
17 in Brooklyn downtown, and he said -- he explained me, brother,
18 we was all agreed to pay the debt, but right now I feel that I
19 don't -- I have \$10,000. I can give it to you -- to them, but
20 if I give them \$10,000 in funds like a deposit, but then I
21 cannot keep functioning in this business.

22 I said, why? He said, I don't have -- I've got the
23 10,000. What about you need the money for the inventory or
24 supporting money, they don't have enough money.

25 Espinal and him make 5,000 and 5,000; 10,000. But after

1 that, he cannot function in this business. I said, what do
2 you want to do, then? Tell me what is your problem, how I can
3 help you. Then he said, okay. So do me a favor. So forget
4 about -- tell them to don't take this money advance, 10,000.
5 I say it is nothing like I can sell them, but I can ask them.

6 And we have to think -- you have to think about how you
7 can do that, and he said, okay. Talk to them. Then, I talk
8 to Paru. I called Paru. This is the matter they don't want
9 to pay \$10,000 in funds, but they don't have enough money
10 because I know Alam from -- actually, that was my condition
11 for this \$10,000, and I seen actually Alam's interest because
12 I seen him. I spoke with him. I thought I'll do that and get
13 the benefit from this place, and that's all what I was
14 thinking.

15 I said, okay. Paru, how are you go to solve this
16 problem? How do you want to say - I said, okay. And then I
17 offer because -- Alam is going to operate this business, so
18 he's going to give you this 3,500 and inventory, and rest of
19 the \$10,000, he's going to give you every month \$1,000.

20 So \$3,500 plus \$1,000, there was able to pay; \$3,500
21 for Hudson Side Cafe; \$1,000 for that advance like a deposit,
22 and 10 months, they said 10 months, we're going to keep
23 continue to pay the 10,000 -- 1,000, 1,000, 1,000. And then I
24 -- it was not finished. Then I said, okay, no, make that
25 \$5,000, and then I can request for them, and they said, no, we

1 cannot do that right now. Then I asked him -- they said,
2 okay, if you recommend him like that, so you can continue and
3 --

4 Q. What do you mean "if you recommend him"?

5 A. Like I say, he's a good guy. I know him from 2009, and as
6 I know him, he's a good guy, so I think you can keep going, so
7 let's try to help him out.

8 Q. And what happened next in terms of the deal and the
9 understanding?

10 A. And after that they in the meantime when they was agree
11 about everything, then I remember the health department, they
12 closed this Hudson Side Cafe, and then Paru, in the meantime,
13 he called me and said Hudson Side Cafe is already closed. I
14 said, why? He said, health department closed this business.

15 I said, okay, so what are you going to do. So there
16 was literally like what they going to do now. So I call Alam,
17 Alam, this is the thing, Hudson Side Cafe is closed by the
18 health department, and this didn't happen. Then, he said,
19 okay. So, then, we didn't say nothing. Then I said, Paru,
20 what are you going to do? He said, we're going to open the
21 business, but, in the meantime, we can tell Alam, we can keep
22 the store until open. He can -- if he need to do anything,
23 renovation or anything, they are interested, Alam and Espinal.
24 If they're interested, they want to do renovation or anything
25 else they want to change, they can change it, and then when

1 they open, they're going to open like a new management or new
2 store just like that, and I thought this is a good idea, if
3 they are angry, then they can take it, yes.

4 Q. Then, what happened next?

5 A. Then I called Alam and I spoke with him, and he said, yes,
6 this is a good idea. So when we opened the business, it
7 looked like new management or newer store, so we can do
8 something as we want to do it.

9 And, in the meantime, other things that I'm going to add
10 that, they said they want to do some furnishings inside. They
11 want to change --

12 Q. Some what --

13 A. They want to change something inside the store because
14 they don't like the Hudson Side Cafe, how it was decorated,
15 they don't like it. I said, okay. So in the meantime when
16 this business is closed, do it, and you can do that.

17 Q. Then what happened then?

18 A. Then they bought one cooler, and they made the counter.
19 His friend like the Carlos, he told me, this is his friend.
20 He bring him there to make the counter and everything. He
21 bought the cooler and everything, and they redesigned the
22 store, the counter.

23 Q. Before we get to the redesigning of the counter and other
24 things, was there a time where you saw if at all any keys
25 being given over to Mr. Alam, to Mr. Espinal?

Proceedings

32

1 A. Keys?

2 Q. Was there any possession turned over to them or no?

3 A. No. They didn't get -- like when they made the deal like
4 -- I remember it's like they made them pay money to Paru,
5 whatever it was the deal, and \$4,000 or something, \$4,500.
6 They gave it to him, and then they took that key.

7 Q. And --

8 A. But that time, I was not there. When they took the key
9 and they pay him, that time I was not there.

10 MR. ANDROPHY: Ask that that last answer be stricken.
11 He didn't personally witness any of that.

12 THE COURT: Yes. You can only testify as to what you
13 know. Now, how did you know that? You didn't personally see
14 that?

15 THE WITNESS: When they gave the key?

16 THE COURT: Yes.

17 THE WITNESS: That, personally, I didn't see that. I
18 didn't see that when they gave the key, and that time I was
19 not personally present because I have my work, so I was unable
20 to go then.

21 THE COURT: And you were not there when the 4,500 was
22 paid?

23 THE WITNESS: That I didn't -- I was not there at the
24 4,500 exchange or something, I was not at that time there, but
25 I went there when they was --

1 BY MR. MOULINOS:

2 Q. I'm not there yet, Mr. Kabir. I'm still trying to finish
3 up what happened at that evening at the Burger King. Let's
4 finish that up.

5 A. Okay.

6 Q. Tell us what else happened there so we move to the next
7 event.

8 A. At the Burger King finished up like that. So they're
9 going to pay them money, the \$4,500, and they want to take the
10 store. They're still interested to do it, and they're going
11 to do it, and they made the appointment to go take the key and
12 payments and the inventory, too.

13 Q. Okay. When is the next time you had any conversation or
14 any activity with Mr. Alam or Mr. Espinal?

15 A. When there was -- I know they already took that store, and
16 they are going there, and Alam told me, yes, they are there.
17 They started to buy the stocks and everything, then I visit
18 there with my family.

19 Q. So the next time you saw Mr. Alam, was that with Mr.
20 Espinal or just by himself?

21 A. No. Alam and Espinal both was there in the store.

22 Q. Okay. You saw them at the store?

23 A. The store, yes.

24 Q. And what did you see them do?

25 A. They was doing like redecoration. Like change the -- all

1 the improvements. They change all the counters and
2 everything, where they was doing there.

3 Q. And did you speak to him? Did he speak to you? Was there
4 any conversation in any way?

5 A. That time I was -- I just went there and I seen them,
6 and I said, okay, thank you. You're going to do better. And
7 then I come back. I used to go to Vernon Boulevard,
8 Riverside, with my family.

9 THE COURT REPORTER: Go where? I'm sorry.

10 THE WITNESS: Vernon Boulevard. Riverside.

11 BY MR. MOULINOS:

12 Q. Is this the location of the store?

13 A. Yeah. By the store, right.

14 MR. ANDROPHY: Vernon Boulevard.

15 THE COURT: Oh, Vernon. Vernon.

16 THE WITNESS: Vernon Boulevard. It was actually in
17 the Riverside. It's called Pepsi Park or something like that.

18 BY MR. MOULINOS:

19 Q. Now, when is the next time you saw Mr. Alam or Mr.
20 Espinal?

21 A. Then after like a couple of days later, I went there and I
22 see him, and Espinal was in the counter working, and Alam,
23 too. They was working.

24 Q. Did you have any conversation with either one of these two
25 gentlemen?

Proceedings

35

1 A. No. Just to say "hi", "hello", and I bought some food. I
2 paid. I leave.

3 Q. After that Burger King meeting, how many times all
4 together did you visit the store?

5 A. After visit who? Me and --

6 Q. You, yourself.

7 A. Around -- I been there, I seen him around five to six,
8 seven times.

9 Q. And who did you see while you visited the store?

10 A. All I seen him -- most of the time, I seen Espinal there,
11 and he was working like -- he said he knows everything. So he
12 was working there mostly, and Alam, I missed maybe one or two
13 times, Alam, but most of the time, I seen them both working.

14 Q. And the period of time after the Burger King meeting went
15 up to what month or what year?

16 A. It was like -- in there, I seen him -- end of this was
17 2013 -- 2013, I seen them, that they was working there.

18 Q. The store deal was in 2012. Does that refresh your
19 recollection?

20 A. So that store -- they took it and -- exactly when, but I
21 cannot remember. It was 2013 and -- yes, it was 2013.

22 Q. How many months after the Burger King deal was the last
23 time you saw either one of these two gentlemen?

24 A. So it was like around another six months maybe, five, six
25 months.

1 Q. Now, throughout all of your visits at the Hudson Side
2 Cafe, did you every see anybody from the prior ownership of
3 the Hudson Cafe, Incorporated people?

4 A. No. I didn't see them there. When I was there,
5 especially, in the evening time, I didn't see nobody there. I
6 seen them -- not these two persons there.

7 MR. MOULINOS: I have no further questions, Your
8 Honor.

9 THE COURT: Okay. Thank you.

10 MR. ANDROPHY: If I may have just a couple minutes to
11 --

12 THE COURT: All right. You can sit and rest. You
13 can just sit instead of standing.

14 THE WITNESS: Thank you.

15 CROSS-EXAMINATION

16 BY MR. ANDROPHY:

17 Q. Good morning, Mr. Kabir.

18 A. Good morning.

19 Q. You mentioned several times in your testimony that your
20 brother is one of the shareholders of Hudson Side Cafe, Inc.;
21 is that correct?

22 A. Exactly.

23 Q. And what is his name?

24 A. M.D.(Phonetic) Asaduzzaman

25 THE COURT REPORTER: I'm sorry. Can you repeat that?

1 THE WITNESS: M.D. --

2 BY MR. ANDROPHY:

3 Q. I think if you would --

4 A. I'm going to explain that like.

5 Q. You want to spell it for the court reporter?

6 A. A-S-A-D-D-U-Z-A-M-N.

7 Q. How often did you speak with your brother about how the
8 business at Hudson Side Cafe was doing?

9 A. We was often speak about it.

10 Q. And over what period of time did you discuss how the
11 business was doing? Like starting in what year would you have
12 discussions with your brother about the Hudson Side Cafe
13 business.

14 A. Not on the Hudson Side Cafe, my brother has business from
15 2010. I know that from 2010, he would talk like his business
16 going this way and this way and this way. So he gave me the
17 information.

18 Q. So you would discuss with him since approximately 2010
19 about the --

20 A. Yeah.

21 Q. I'm sorry. Let me finish. About the Hudson Side Cafe
22 business.

23 A. Yes.

24 Q. And did you get an understanding of how the business was
25 doing in those years?

1 A. Yeah. That the business was doing bad, so they cannot --
2 they was losing money from there. From that was like 2012, he
3 informed me, but 2010 to 2011, they didn't loose or business
4 was bad, they didn't tell me about it. They continue the
5 business.

6 Q. Did you have any discussions in 2010 or 2011 with your
7 brother about how the business was doing?

8 A. Yes. They said they were doing good at that time because
9 my brother, at that time, was still working there. That's why
10 business was doing good.

11 Q. And your brother worked at the restaurant; is that
12 correct?

13 A. Yeah. He did like that -- beginning of the time, he did
14 work there.

15 Q. Did you visit the restaurant when your brother was
16 operating it?

17 A. Very, very, very little.

18 Q. You mentioned that there was a time that the health
19 department closed down the Hudson Side Cafe business, correct?

20 A. Yes.

21 Q. Do you recall when that was, what month and year?

22 A. It was like June or maybe -- May or June like
23 approximately this time, but I don't know exactly because I
24 was not related with that.

25 Q. Is that 2012?

Proceedings

39

1 A. Yeah.

2 Q. Did this happen before or after the meetings that you
3 testified about, the two meetings that you testified about;
4 one at Hudson Side Cafe, the other at Burger King?

5 A. After that.

6 Q. Okay. Now, you were not a partner of Hudson Side Cafe,
7 Inc.?

8 A. No, I'm not.

9 Q. You were not a shareholder?

10 A. No.

11 Q. Why were you at the meetings with Mr. Alam and Mr.
12 Espinal and with Paru?

13 A. Because Alam he was interested to take the business to do
14 that, that's why I could tell them to, okay, if you were
15 interested to call the meeting and tell them whatever you want
16 to purchase, offer them, and talk to them because I'm not the
17 partner of this business. I don't know about that. So if
18 they're interested, then you can go ahead.

19 Q. And I know you gave a lot of testimony about how the
20 parties discussed what the deal would be. I want to make sure
21 I understand your testimony about what the final agreement
22 was. Can you tell us what the final agreement was?

23 A. It was like a verbally agreement like -- I can add that
24 one thing like what happened there. So they was saying they
25 wanted to pay \$10,000 deposit and the 3,500 and all the rent

1 and utility.

2 Then both parties was to able to make an agreement about
3 it, but when Alam offer went to me and said his position, like
4 how he doesn't have money, then he said he want to pay \$1,000
5 a month, and then he said -- the position like that Hudson
6 Side Cafe, they said, no. Until they pay the \$10,000, we
7 cannot make -- I'm not going to make, we are not going to make
8 any agreement with them.

9 So when they pay the \$10,000, then we are going to make
10 the agreement because there is no deposit here, so I cannot
11 make him any agreement without money.

12 Q. So was there no final agreement?

13 A. There was no reach an agreement, but it was final
14 agreement how they want to take this business.

15 Q. So what was that final agreement of how they would take
16 that business if you know?

17 A. So as I say pay \$3,000 they're going to pay them to -- for
18 acquiring this business and then rent and the utilities,
19 they're going to pay.

20 Q. Was there any agreement about who would pay to purchase
21 food that the restaurant would need to prepare food?

22 A. Then, all -- like further inventory, the Hudson Side Cafe,
23 they operated -- they don't want take anything. We don't want
24 to come here. We cannot see -- anything you need, you buy and
25 you cell, it is yours. That was the deal.

1 Q. Do you know if the restaurant was making money in the
2 first six months of 2012?

3 A. I do not know about it. I do not know.

4 Q. Did you ever write anything down about the terms of the
5 agreement?

6 A. I did not write nothing about it?

7 Q. Never wrote any notes?

8 A. No. I did not. By myself, I did not.

9 Q. Do you know if anyone else wrote any notes about what the
10 agreement was?

11 A. The agreement -- no. It was not written agreement
12 anything there. Only the things they tell me I know was
13 inventory, and Paru said he was there, and that's inventory
14 they paid for that. That's only the reason --

15 Q. Do you have personal knowledge of that, the inventory that
16 was written?

17 A. I knew that from Paru because they already gave the money.

18 Q. But you only know that from Paru telling you?

19 A. And Alam told me, also. They are to pay for the inventory
20 and the money -- the advance one month, and then they're going
21 to take about the business. That's only -- the things I know
22 that's anything was not written, any agreement. Because the
23 Hudson Side Cafe refused that. Until \$10,000 they paid
24 deposit, they didn't want to make any agreement with them.

25 Q. Do you have any personal knowledge of anything that was

1 written having to do with this agreement?

2 A. Personal written?

3 Q. Do you have any personal knowledge of anything being
4 written down to memorialize the agreement?

5 A. No. I do not. I don't know. I didn't see anything
6 written, anything, about the agreement.

7 Q. Okay. And the inventory that you mentioned seeing
8 something written about that, did you personally see something
9 written down or is that --

10 A. Yeah. That I seen, yes. That I seen.

11 Q. Have you discussed this matter with any of the defendants
12 before coming here today?

13 A. With who?

14 Q. Have you discussed this matter with -- well, let's do it
15 one-by-one. Have you discussed this matter with Paru Khan
16 before coming here today?

17 A. No. I did not discuss anything.

18 Q. Have you discussed this matter with Mohammed Sain before
19 coming here today?

20 A. No. No.

21 Q. Have you discussed this matters with your brother, Mr.
22 {sas} as {doos} man?

23 A. No. I did not.

24 Q. Have you discussed this matter with the defendants'
25 attorney?

1 A. No. I did not.

2 Q. You haven't met with the defendant's attorney before
3 today?

4 A. No. I did not.

5 MR. ANDROPHY: I have no further questions.

6 MR. MOULINOS: Judge, I have no further questions
7 either. Thank you.

8 THE COURT: You may step down. Thank you. Good luck.

9 THE WITNESS: Thanks again for giving me this time.

10 THE COURT: Yes. Good luck. And congratulations.

11 THE WITNESS: Oh, thank you. Thank you. Thank you. So
12 am I --

13 THE COURT: You're excused.

14 MR. MOULINOS: You may go. Thank you.

15 THE WITNESS: Thank you very much.

16 MR. ANDROPHY: Plaintiffs call Carlos Oaxaca.

17 **C A R L O S O A X A C A**

18 called by The Plaintiff, having been
19 first duly sworn, was examined and through the
20 interpreter, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. ANDROPHY:

23 Q. Good morning, Mr. Oaxaca.

24 A. Good morning.

25 Q. Did you ever work for a business known as Papo's Fried

Proceedings

44

1 Chicken and Zack's Pizza?

2 A. I'm sorry. Again, the question?

3 Q. Did you ever work for a business known as Papo's Chicken
4 and Zack's Pizza?

5 A. Yes.

6 Q. And what is Papo's Chicken and Zack's Pizza?

7 A. Well, are you referring to with the question.

8 Q. What kind of business is that?

9 A. They would sell pizza; fried chicken; fries; hamburgers;
10 salads.

11 Q. Where is it located?

12 A. It's located on 4811 Vernon Boulevard, LIC.

13 Q. Can you describe the physical appearance of Papo's
14 Chicken?

15 A. Can you repeat the question as far as how it appeared?

16 Q. Yes. Can you describe the physical appearance or layout
17 of the restaurant?

18 A. Okay. When you enter the restaurant, you enter the front.
19 It used to be, I don't know if it still is. It was the place
20 where you would place the pizza. On the left-hand side would
21 be where the cash register was at and where they would put the
22 salads. On the back end on the left side was the machine that
23 would churn the dough for the pizza. And then next to that
24 was the refrigerator for the chicken -- I'm sorry -- the fryer
25 for the chicken. And then after that the fryer for the French

1 fries that we would fry each day. After that was the grill,
2 and on the right-hand side was the place where they would wash
3 the dishes.

4 Q. Okay. Thank you. How did you find your job at Papo's
5 Chicken?

6 A. I was passing by looking for work. I passed by many
7 locations, gave my information. I was waiting for them to
8 respond, and when I passed by that location, I gave my
9 information and waited for them to call.

10 Q. Who did you give your information to?

11 A. I gave my information to Mr. Espinal. Because at that
12 moment, he was the person I saw out front.

13 Q. And did you have conversation with Mr. Espinal?

14 A. Yes. The conversation I had with him about the bit of
15 experience that I had.

16 Q. And did Mr. Espinal offer you a job, then?

17 A. No. No. He told me he was going to give the information
18 to the owner of the business, and then I would have to wait to
19 see what he decided.

20 Q. What happened next in terms of your attempt to get a job
21 at Papo's Chicken?

22 A. If I remember correctly like two or three days later, they
23 spoke to me by phone, and he said, yes, the job was available
24 for me.

25 Q. What happened next regarding your work at Papo's Chicken?

Proceedings

46

1 A. When I showed up that day we agreed on to go to work, the
2 -- that man was present, Mr. Khan Paru, the owner, the person
3 who's the owner of the business and Juan Espinal.

4 Q. How do you know that Mr. Paru Khan was the owner of the
5 business?

6 A. Because Mr. Espinal told me he was the owner of the
7 business, and it was he, he asked.

8 Q. Is Mr. Khan here in the courtroom today?

9 A. Yes. He is here. He's at the end back there.

10 Q. Did you meet with Mr. Khan on that day that you came to
11 work at the restaurant?

12 A. Yes.

13 Q. And was anyone with you while you met with Mr. Khan?

14 A. Yes. Mr. Espinal.

15 Q. Did you discuss the terms of your employment with Mr.
16 Khan?

17 A. Yes. It was spoken about the job I was going to carry
18 out.

19 Q. What was Mr. Espinal doing in this conversation?

20 A. Mr. Juan Espinal translated what Mr. Khan Paru was
21 saying.

22 Q. So who hired you to work at Papo's Chicken?

23 MR. MOULINOS: Objection. Calls for conclusion.

24 THE COURT: It's overruled. It's overruled.

25 THE WITNESS: Mr. Khan Paru.

Proceedings

47

1 BY MR. ANDROPHY:

2 Q. What job did he hire you to perform?

3 A. The job he hired me for was to cook, simply to do the
4 kitchen work.

5 Q. Is that the job that you did throughout your employment at
6 Papo's Chicken?

7 A. No.

8 Q. Did something change in the job that you did?

9 A. Yes. It changed totally, the work.

10 Q. And what was the change?

11 A. The change was that I started doing deliveries. I would
12 cook. I would wash. I would do the cleaning. And then after
13 months, I started cooking pizza.

14 Q. Did Mr. Khan tell you at your first meeting what your
15 schedule would be?

16 MR. MOULINOS: Objection. Leading, Your Honor.

17 THE COURT: I'll permit it at this point.

18 THE WITNESS: I'm sorry. The question, again.

19 BY MR. ANDROPHY:

20 Q. The question was if Mr. Khan told you what your schedule
21 would be?

22 A. Yes. He told me about my work schedule.

23 Q. And what schedule did he tell you would work?

24 A. I was going to work seven in the morning until 11 o'clock
25 at night, seven days of the week.

Proceedings

48

1 Q. And is that the schedule that you actually worked?

2 A. Yes.

3 Q. Did that schedule ever change while you were working at
4 Papo's Chicken?

5 A. Yes, the schedule did change.

6 Q. When did the schedule change?

7 A. The schedule change at the end of January, that's when the
8 schedule changed.

9 Q. And how did it come about that your schedule changed?

10 A. Because I asked for a raise in my salary because I felt
11 already it was way too many hours for everything I was doing.
12 That's why I spoke with him so he could increase a little more
13 the money, but that was not the case, he then cut my time. He
14 changed my schedule from when I started working.

15 Q. You said "he" in this conversation. Who was this
16 conversation with?

17 A. At that moment, it was Mr. Paru and Mr. Espinal who
18 translated for me because I did not know how to speak. I
19 don't speak English much, and I did not understand too much at
20 that moment.

21 Q. Did you always work the hours that you were scheduled to
22 work at Papo's Chicken?

23 A. Yes.

24 Q. Did you ever have to begin work earlier or stay at work
25 later than usual?

Proceedings

49

1 A. Yes. Staying later than what I was scheduled, yes.

2 Q. Were you compensated anything extra if you worked
3 additional hours?

4 MR. MOULINOS: Objection.

5 THE COURT: I'll permit it.

6 THE WITNESS: No. It was always the same salary I
7 was given.

8 THE COURT: What was the salary?

9 THE WITNESS: The salary was from \$600 a week for all
10 seven days.

11 BY MR. ANDROPHY:

12 Q. And was that your pay throughout your employment?

13 A. Yes.

14 Q. And who -- did you have a discussion at the time you were
15 hired about what your pay would be?

16 A. Yes. At the beginning when I presented myself to Mr.
17 Paru, he told me what he was going to pay me per week.

18 Q. And was that during the same discussion that you told us
19 about earlier where your schedule was discussed?

20 A. Yes.

21 Q. Did the restaurant keep track in any way of the hours you
22 worked?

23 MR. MOULINOS: Objection.

24 THE COURT: I'll permit that.

25 THE WITNESS: No. There was no control of the time I

Proceedings

50

1 was working there.

2 BY MR. ANDROPHY:

3 Q. Did you enter your time on the time clock?

4 A. No. There was nothing to like punch in, nothing, or write
5 in a book, nothing.

6 Q. Did you receive any break times during your work hours?

7 A. No. They did not give me any specific time for break
8 because the restaurant was moving. It was something to do;
9 many things to do.

10 Q. Did you ever eat during the day?

11 A. Yes. I would eat things during my work hours, but I would
12 just eat while I was working.

13 Q. How were you paid your salary each week?

14 A. In cash.

15 Q. And who paid you?

16 A. Mr. Paru.

17 Q. Was there -- strike that. When you say "Mr. Paru" paid
18 you, was he the one that gave you the money?

19 A. Yes. Directly into my hand he would deliver the money.

20 Q. Was there a regular day of the week that he would do that?

21 A. Yes. He would pay me -- he started paying me first on
22 Saturdays, then he started paying me on Sundays.

23 Q. How often did Mr. Paru come to the restaurant?

24 A. Everyday.

25 Q. How long would he usually be at the restaurant?

Proceedings

51

1 A. He would normally stay two, three, four hours.

2 Q. What did he do when he came to the restaurant?

3 A. The men would sit off to one side. He would see how the
4 business was doing and chat with Mr. Juan Espinal and Mr.
5 Alam.

6 Q. Is there anything else that you saw him do?

7 A. No. Just that.

8 Q. Did you meet any other owners of Hudson Side Cafe, Inc.,
9 aside from Mr. Paru?

10 A. No. No. At the beginning, I only knew that it was him.

11 Q. During the time that you worked at the restaurant, did you
12 meet anyone else who wasn't an owner of the restaurant?

13 A. Yes.

14 Q. Do you remember the name of the person?

15 A. Yes. The name of man, I can't exactly say it, but they
16 would call him "Shahin".

17 Q. During the time that you worked at Papo's Chicken, how
18 many other employees were there?

19 A. It was just three employees.

20 Q. Is that including you or in addition to you?

21 A. No counting myself. Until I left. After those gentlemen,
22 more people came.

23 Q. Okay. Who worked with you when you started working there?

24 A. I by myself in the morning, and then by 10 in the morning
25 is when Mr. Juan Espinal will arrive and Alam.

Proceedings

52

1 Q. And what were Mr. Espinal's responsibilities at the
2 restaurant? What was his job at the restaurant?

3 A. He his job, Mr. Espinal, was making pizzas, taking calls
4 for deliveries, and on some moments, I would see him charge
5 clients.

6 Q. And what was Mr. Alam's job at the restaurant?

7 A. Mr. Alam's job was making salads, and he would also
8 charge at the cash register, and he would also take orders
9 from the phone, whoever would arrive at the restaurant, he
10 would also take their orders.

11 Q. Among yourself, Mr. Espinal, and Mr. Alam, were one of
12 you in charge of the others?

13 A. No.

14 Q. So who was in charge of the restaurant?

15 A. Mr. Paru.

16 Q. Did you see what would happen to the money that was in the
17 cash register at the business?

18 A. Yes. Many times I noticed, yes.

19 Q. What would happen to it?

20 A. When Mr. Paru arrived and the time that he would be there
21 about a half hour before he would leave, it would take -- they
22 would take out the money while Mr. Alam, Espinal and Khan
23 Paru was present. They would count whatever was sales to
24 that point of the day, and they would give them to Mr. Paru,
25 he would be the one to pick up the money everyday.

1 Q. Did you ever deposit money from the restaurant into the
2 bank?

3 A. Yes. There were some occasions where I would deposit
4 some money to the bank; it wasn't frequent.

5 Q. And why would -- why would you deposit money into the
6 bank?

7 A. As an employee, they would send me to go deposit.

8 Q. Who would send you?

9 A. He would give the order. Mr. Khan Paru would speak on
10 the phone that someone had to be sent to deposit into the
11 bank.

12 Q. Did you ever personally write any checks for the
13 restaurant?

14 A. No. No. I had nothing -- any manner or permission to do
15 song some kind of check, no.

16 Q. Okay. Did anyone ever ask you to sign an employment
17 agreement?

18 A. No. No one. Never.

19 Q. Did anyone at Papo's Chicken ever give you a document
20 stating how much you would be paid?

21 A. No. Nothing. Nothing written; everything was verbally.

22 Q. When you received your pay, did you ever receive a written
23 statement listing how much you were being paid?

24 A. No.

25 Q. Did you ever see at the restaurant any posters about the

1 minimum wage laws?

2 A. No. Never.

3 Q. Do you still work for Papo's Chicken?

4 A. No. No.

5 Q. When did you stop working there?

6 A. The last day was April 24th when I suffered an accident
7 inside the pizzeria.

8 Q. What kind of accident?

9 A. I burned the left side of my face with hot oil.

10 Q. Did you apply for worker's comp?

11 A. Yes. It's in the process, yes.

12 MR. ANDROPHY: No further questions for this witness.

13 THE COURT: I just want to get the right year. When
14 you say you stopped on April 24th, is it of 2014 or 2013?

15 THE WITNESS: No. No. It was 2013; April 24th,
16 2013.

17 THE COURT: Okay. You may proceed, Mr. Moulinos.

18 CROSS-EXAMINATION

19 BY MR. MOULINOS:

20 Q. Good morning, Mr. Oaxaca.

21 A. Good morning.

22 Q. What is your first day of work at this pizza place?

23 A. Can you specify what you mean by my first day of work?

24 Q. It means exactly what I asked: The first day he entered
25 the story as an employee.

Proceedings

55

1 A. The work I started to perform?

2 Q. I don't know. What's the first day at work? How
3 difficult could this be?

4 A. It was hard the first day in the fact that the business
5 would move around a lot and with the passing of the days, and
6 my work would increase, and it wasn't hard, but little bit
7 more work than what I thought was for me.

8 Q. Is this what the attorney prepared you to say today, sir?

9 MR. ANDROPHY: Objection. He's asking for attorney/
10 client privilege discussions.

11 THE COURT: I'll permit that question.

12 THE WITNESS: No.

13 BY MR. MOULINOS:

14 Q. Then what is the first day of work, sir, so simple?

15 A. Like every job when you enter, they give you the
16 instructions on what you have to do and you start working.

17 THE COURT: When did you start working at Papo's?

18 THE WITNESS: I started working the very exact day,
19 no, but it was the second week of August.

20 THE COURT: Second week of August?

21 THE WITNESS: Second week of August of 2012.

22 THE COURT: What day of the week?

23 THE WITNESS: It was the beginning of the week. It
24 was a Monday I start working.

25 THE COURT: 2012?

1 THE WITNESS: 2012, yes.

2 BY MR. MOULINOS:

3 Q. And how did you find this particular job, sir?

4 A. I became aware of the job because days before I was
5 without a job, and I went looking for work precisely in that
6 area, looking for work. I passed by that store just like
7 various stores that were nearby, and I left my information
8 just like the stores that I passed by previously today.

9 Q. Previously, you said that you went about the area giving
10 out leaflets in search for a job.

11 MR. ANDROPHY: Objection. It's mischaracterizing
12 testimony, specifically, leaflets. I don't think that's what
13 he testified to.

14 THE COURT: That's what he testified to.

15 THE WITNESS: No.

16 BY MR. MOULINOS:

17 Q. Sir, did you any give out any paperwork in search for a
18 job as you visited these various stores?

19 A. No paperwork. Just that the person would take down my
20 information and the previous work that I had done. They would
21 write it down.

22 Q. Before you even approached the defendants' Chicken, slash,
23 pizza place, how many doors of other stores did you enter in
24 order to ask for a job?

25 A. I entered like five, six stores.

Proceedings

57

1 Q. And what were the nature of their business?

2 A. It was a pizzeria. Previously, a deli that was there.
3 Further up, there was a restaurant. And there was another
4 deli where I entered working for work.

5 Q. So altogether approximately how many doors did you knock
6 in search for a job?

7 MR. ANDROPHY: Asked and answered.

8 THE WITNESS: I answered that question already.

9 THE COURT: I would have permitted the question.
10 Please don't make spontaneous comments. If you want to, you
11 can object.

12 MR. ANDROPHY: Okay. I apologize.

13 THE COURT: Can you answer that question, please?

14 THE WITNESS: Yes. From five to six stores that I
15 passed by.

16 BY MR. MOULINOS:

17 Q. And during how long of a period of time did it take you to
18 go through this process of knocking at the doors in search of
19 a job?

20 A. It was a question of 15, 20 minutes while I would give my
21 information and then walk out and look for next store.

22 Q. And how long of a space of time from the first time you
23 went to the first store to August, the second week, 2012?

24 A. Can you repeat the question?

25 Q. How long did you search for a job before you found this

1 job?

2 A. More or less, around an hour. After there, I continued
3 looking at other businesses, and I walked everything that was
4 Vernon Boulevard.

5 Q. So did you take one day to cover these five stores? Did
6 you take a month or did it take a year prior to August 2012 to
7 search for a job in that area?

8 A. No. I just passed by one day, not months like he says,
9 no. Just one day, I passed by that one area.

10 Q. And, sir, why did you pick this very specific area to
11 search for a job?

12 A. I didn't specifically pick this area. I previously was
13 looking to the Jackson Heights area which is where I live. In
14 lower -- I guess you could say it's lower Manhattan because I
15 had worked on 25th Street and Lexington Avenue. I looked
16 around that area, as well.

17 Q. My question, sir, is this: What made you go to Long
18 Island City in the area of that block of Vernon Boulevard
19 where the restaurant is located in search for a job?

20 A. Yes. Because a friend of mine worked in that area
21 previously, and when I spoke to that friend and he found out I
22 did not have work, he told me to go that area looking for
23 work.

24 Q. Could you now tell us very clearly exactly what day and
25 what year was this day you were looking for a job?

Proceedings

59

1 A. What day; what date -- not exactly.

2 Q. Give us any clue.

3 A. I could say you're asking me about this area of work, this
4 location.

5 Q. Correct.

6 A. Once again, I was a little confused. Can you repeat the
7 question.

8 Q. Okay. Let's move on. Before you found this job, how long
9 had you previously been looking for work anywhere?

10 A. I was for like a month, month-and-a-half, looking for
11 work.

12 Q. And what did you do prior to that month,
13 month-and-a-half.

14 A. I was working at a deli that was located on 37th Avenue
15 and 99th Street in Jackson Heights.

16 Q. And how long did you work there?

17 A. I worked there approximately like four-and-a-half months I
18 worked there.

19 Q. And what were your duties there?

20 A. My responsibilities were making sandwiches, stocking sodas
21 in the fridge, everything that was sold there. Sold there.

22 Q. Were deliveries included in that description?

23 A. Yes. Because it was only one or two blocks where they
24 would do the deliveries, and they would deliver only beers.

25 Q. Did you make pizza by any chance in that store?

Proceedings

60

1 A. No. It wasn't a pizzeria, it was a grocery.

2 Q. And prior to those job, sir, what was the previous job to
3 that?

4 A. I was at a deli, which was located between 25th and
5 26th on Lexington Avenue. The name of the place is Deli 71.
6 I would also stock soda, beer, and I also helped the young man
7 that worked with me at that deli.

8 Q. So other than stocking the entire day, sorting the
9 refrigerator, what other responsibilities did you have at that
10 job?

11 A. No. Other responsibilities just stocking the soda, the
12 beers or whatever that I had to do there and helped my
13 co-worker whenever he needed it, but there was no other
14 responsibility.

15 Q. And how many hours a day did you work at that job?

16 MR. ANDROPHY: Objection. These other jobs aren't at
17 issue.

18 MR. MOULINOS: I was very specifically referring to
19 these stocking jobs, Judge.

20 THE COURT: I'll let you just ask a couple more
21 questions, put you're really way past the scope of cross-
22 examination.

23 MR. MOULINOS: I'm testing his creditability, Your
24 Honor.

25 THE COURT: All right. Well, I'll permit a little

Proceedings

61

1 more. I understand where you're getting at, but let's not go
2 down too many side roads.

3 MR. MOULINOS: Okay, Judge. Fine. I'll move to
4 another area quickly. Can I have an answer to that question,
5 please?

6 A. Can you repeat the question?

7 Q. How many hours per day would he have his job stocking
8 soda, and you as a --

9 A. I would work 10 hours.

10 Q. Okay. Now, let's get back to how you found this job that
11 is part of this lawsuit. Tell us at what time did you first
12 enter the door of Zack's pizza, which is Hudson Side Cafe
13 property?

14 A. I can't say exactly the time. What do you want me to tell
15 the man.

16 Q. Was it the morning, the afternoon, or the evening or the
17 night?

18 A. No. It was in the morning.

19 Q. Was it the early part of the morning? Was it in the later
20 part of the morning or what's your best recollection? A.
21 No. A little bit like close to noon.

22 Q. Okay. And the first time you entered, what did you say
23 and to whom?

24 A. When I entered, I was in front of Mr. Juan Espinal, and I
25 asked him if they needed someone to work for them.

Proceedings

62

1 Q. And what else did you ask?

2 A. I just asked -- I just asked that if they need someone to
3 work because I was searching for work.

4 Q. And did Mr. Espinal tell you something?

5 A. Mr. Juan Espinal told me leave me your information, and
6 when my boss comes, he said, I will give him your information,
7 and then if there is something, some work to offer you or give
8 you, I'll let you know.

9 Q. Did Mr. Espinal ask you what background you had in the
10 field?

11 A. Yes. He asked me what did I know to do.

12 Q. And what did you say?

13 A. My answer was -- I answered I know how to work on the
14 grill. I know how to make different types of sandwiches. I
15 know how to stock, organize, soda -- in this case, they sold
16 soda and juices.

17 Q. Anything else?

18 A. And what had to do with cleaning, which is what I did in
19 the previous business, as well.

20 Q. Did you say you know how to make pizza?

21 A. No. At no moment did I say that I know how to make pizza.

22 Q. Did you say that you could that you make deliveries?

23 A. No. I did not say that.

24 Q. And how long did this first meeting last?

25 A. Fifteen to 20 minutes while I gave my information.

Proceedings

63

1 Q. So what else did you discuss in this 15 to 20 minutes
2 other than these few things you just mentioned?

3 A. I had mentioned that I had passed by through various
4 locations, but still haven't had the luck of finding some
5 work.

6 Q. And after you left this particular store, did you go to
7 knock at other doors in search of a job?

8 A. Yes.

9 Q. How many?

10 A. I tell you that I was walking up to -- I walked to Queens
11 Plaza Street. I got up to there.

12 Q. So all together how many stores did you enter in search of
13 work on that particular day?

14 A. I entered from five to six stores looking for work, and I
15 walked that whole street, and when I turned on this other
16 street, I just walked towards the train looking at what
17 businesses are there, but, then, I no longer entered looking
18 for work because I was already tired of searching for work.

19 Q. So on that day, this particular store was the last door
20 you entered in search of a job; is that what I understand?

21 A. It was not the last store, no.

22 Q. I'm trying to understand. How many stores did you go
23 enter before this particular one and how many after on that
24 particular day. Can you give us the breakdown, please?

25 A. I entered first were three stores before. From there, I

1 then went to the pizzeria. From there, I went to the next
2 corner, which I believe is a restaurant, and then after there,
3 I went to a deli that was right before a restaurant where they
4 do Chinese food.

5 Q. The next day, did you go to another place in search for a
6 job? What happened the next day?

7 A. No. I no longer went to that area for work.

8 Q. Did you go to another area for work?

9 A. No. I no longer went to another area for work because
10 previously I had already gone to other stores, other places,
11 and the only other thing left to do was wait at that time.

12 Q. And "wait", you mean wait, maybe, possibly get this job?

13 A. Not that job specifically, but wait for a call from
14 another place that I had dropped off my information at.
15 Whether it was this area, lower Manhattan, or in Jackson
16 Heights where I was searching.

17 Q. And this job that you finally landed ended in April 24th,
18 2013.

19 THE INTERPRETER: 2015?

20 MR. MOULINOS: Thirteen.

21 THE WITNESS: 2013. Yes. That's when I stopped
22 working.

23 BY MR. MOULINOS:

24 Q. And why did you stop working at that location?

25 A. I stopped working because this is when the accident

1 happened. I was a day-and-a-half at the hospital. When I got
2 out of the hospital, I transported to -- I went home by taxi,
3 and I called Mr. Khan Paru to talk about the situation
4 regarding him owing me a week of work and explaining that I
5 needed the money because I wasn't going to be able to go to
6 work, and since I have my family far from this country, and I
7 have to send them money.

8 And that's the reason I called Mr. Paru to pay me what he
9 owed me. As a matter of fact, after the day-and-a-half I was
10 in the hospital, the next day after getting home, Mr. Paru
11 spoke to me. That Mr. Shahin wanted to speak to me and that
12 he was going to come to my house, to please be ready to
13 receive him.

14 And that's exactly happened, the gentleman came to the
15 house. I spoke to him outside in the street because he did
16 not enter my home. No. And he told me not to worry, that he
17 was going to help me with everything he could, that they were
18 going to pay for that time I was out and questions of
19 recuperation and that he was go going to give me, pay me
20 weekly what he was paying me, and whatever I needed juice,
21 water, milk, food, whatever I needed, to let him know and that
22 he was going to bring these things to me. As a matter of
23 fact, he was coming with his wife and told me not to worry,
24 that they were going to help me.

25 Q. This meeting took place in the hospital or in your house?

Proceedings

66

1 A. No. In the street, outside of my house.

2 Q. How long did this meeting last?

3 A. More or less about a half an hour because I couldn't stay
4 outside for too long because of the air or the particles that
5 could contaminate that part of my face.

6 Q. And this meeting took place after you had been released
7 from the hospital or before?

8 A. No. After they discharged me from the hospital.

9 Q. And that other conversation you had with Mr. Paru from
10 the hospital, was it by telephone?

11 A. In the hospital -- no. When I had the conversation with
12 Paru is when I got out of the hospital, and it was by phone.

13 Q. And how long did that conversation last in time?

14 A. It could have been five, 10 minutes that would be a lot,
15 not long.

16 Q. And these two meetings were in the Spanish language or in
17 English?

18 A. No. It was English because I've had already passed a few
19 months, and I tried to improve to speak and understand the
20 best as possible as I can.

21 Q. So that conversation -- these two conversations you had
22 were in English?

23 A. Yes. Because they -- the gentleman don't speak Spanish,
24 and I don't speak their language.

25 Q. However, two months before and three months before during

1 your employment, at this location, you needed Mr. Espinal to
2 translate for you? What happened for the three months?

3 A. Yes. Because I did not understand totally what they said.
4 I would understand part of what they were telling me.

5 Q. Sir, you just testified for a half an hour you had a
6 rather sophisticated conversation in English regarding all the
7 benefits that Mr. Paru was going to provide you.

8 A. Not Mr. Paru, it was Mr. Shahin.

9 Q. Fair enough. But you understood Mr. Shamim, correct? And
10 by the way, who is Mr. Shahin?

11 A. Mr. Shahin, the name I don't know really what is his
12 name, but it was the man who came before me.

13 Q. And did you know him as being a worker at the pizza place?

14 A. Not as a worker, like owner.

15 Q. As a what? And by the way, did you have conversations at
16 the restaurant with Mr. Shahin before the accident?

17 A. Not conversations, just arriving and greeting, and many of
18 them from their country now speak a little Spanish greeting
19 saying: Hello, friend. How are you? (Spoke in
20 Spanish/English) Exactly. And that was just the conversation
21 I had with him or just what he would tell me. That's all.

22 Q. I'm trying to understand this, Mr. Oaxaca. Why would Mr.
23 Shahin go for half-an-hour to visit you in the middle of the
24 street to discuss issues since you never spoke before in
25 essence?

Proceedings

68

1 MR. ANDROPHY: Objection. Calls for speculation.

2 THE COURT: It's sustained.

3 MR. MOULINOS: Okay. Let me rephrase, Your Honor.

4 BY MR. MOULINOS:

5 Q. Do you have an idea why Mr. Shahin would come to meet you
6 in front of your house in the street to discuss future
7 benefits to be provided?

8 A. Yes. I understand now why the man came to my house that
9 day.

10 Q. And what did you understand?

11 A. Now, I understand that he, perhaps, or I think that maybe
12 he was afraid for me to sue because of the injury I had in my
13 face.

14 Q. Do you know if he's any owner of this Hudson Side Cafe
15 corporate entity?

16 A. Yes. With the people that I worked with days before the
17 accident, they told me that he was the owner. He and Mr.
18 Paru were the owners of the business.

19 Q. All right. Let's go back to the first days that you got
20 this job. Do you remember that day?

21 A. What day?

22 Q. The first day you started to work at the pizza place.

23 A. Yes. My first day of work, yes.

24 Q. Okay. So tell us what time did you arrive there.

25 A. I arrived there at that job at seven in the morning.

Proceedings

69

1 Q. Before you said it was close to the afternoon, now it is
2 seven in the morning.

3 MR. ANDROPHY: Objection. Mischaracterized his
4 testimony.

5 THE COURT: It's sustained. Are you talking about
6 the first day he went to the restaurant or the first day that
7 he worked at the restaurant?

8 MR. MOULINOS: He worked at the restaurant. Did I
9 miss something? I apologize. Withdrawn then. Okay.

10 THE COURT: He didn't say that he arrived in the
11 middle of the afternoon.

12 MR. MOULINOS: Then I misunderstood. My apologies.
13 BY MR. MOULINOS:

14 Q. So you arrived at seven o'clock that morning, correct?

15 A. Yes. To work at the time they told me to present myself
16 to work.

17 Q. And that was roughly the second week of August 2012,
18 correct?

19 A. Yes. The second week of August 2012.

20 Q. And the one who greeted you there was Mr. Juan Espinal?

21 A. I was greeted by Juan Espinal and Mr. Khan Paru who was
22 present at that moment.

23 Q. So on that meeting, the first time you went to work, Mr.
24 Paru was present with Mr. Espinal?

25 A. Yes. And Mr. Alam, as well.

Proceedings

70

1 Q. And that was at seven o'clock that morning?

2 A. Yes. Those were the first two days that they were there
3 at that time.

4 Q. Okay.

5 A. Because afterwards, I would see them later.

6 Q. Okay. After this first day of work until April of 2013,
7 how many times ever did you see Mr. Paru be there at seven
8 o'clock in the morning?

9 A. No. None after that day, I never -- I would never saw him
10 at that time until the afternoon when he would arrive.

11 Q. Then is there any reason that maybe you saw Mr. Paru that
12 morning at seven o'clock?

13 A. Yes. To give me the instruction of what I was going to do
14 as my job, what I to do.

15 Q. And Mr. Paru spoke to you directly?

16 A. He spoke to me directly, but since I did not understand
17 him, Juan Espinal was who translated what he was telling me.

18 Q. You don't know what Mr. Paru said then, you only knew
19 what Mr. Espinal told you.

20 A. Yes. exactly.

21 Q. So let's take it one-by-one. What did Mr. Espinal tell
22 you your duties were according to the supposed translation
23 from Mr. Paru?

24 A. Okay. Mr. Juan Espinal told me that my job was going to
25 be cooking, and little by little, he would teach me how to

1 make the dough for pizza because I did not have any experience
2 in doing that. And that -- well, the job I was going to do:
3 Cook fries; pizzas that were supposed to be combined for
4 whatever order was made.

5 Q. What else did he tell you you were going to do? That's
6 it?

7 A. Yes. That was all that I was told that I was going to do
8 at the beginning.

9 Q. All right. Let's take each one at a time, sir. You
10 mentioned your job, primary job was cooking.

11 A. Yes.

12 Q. Cooking what?

13 A. Cook hamburgers; making sandwiches.

14 Q. I'm sorry. What else?

15 A. Cook, making sandwiches, frying fries, frying chicken
16 wings that were sold, and that was what I started doing at the
17 beginning.

18 Q. Now, as far as you understood this conversation, you came
19 with experience in cooking or they were going to teach you to
20 cook these things?

21 A. No. I already had some experience cooking because I
22 repeat: I worked at a deli previously. I worked at a grocery
23 where they only did sandwiches. So I had -- that was the
24 little bit of experience that I had doing that.

25 Q. Other than making sandwiches, what other cooking

1 experience did you have prior to that day?

2 A. That was all my experience, making sandwiches; frying
3 French fries, hamburgers. That was the only experience I had
4 regarding cooking.

5 Q. Okay. Fair enough. And the understanding was Mr. Paru
6 was going to teach you eventually to also do pizza, correct?

7 A. No. Not Mr. Paru, put Juan Espinal commented that if I
8 wanted to learn how to make pizza and since I always want to
9 push forward in all the jobs I've had, he started little by
10 little how to make pizza; how to prepare the dough for the
11 pizza, the sauce for the pizza. In the course of the months,
12 he taught me how to do that.

13 Q. When Mr. Paru was talking, did you understand any words
14 spoken in English?

15 A. One -- another word, but not in total. Not everything;
16 some words. Because, previously, the owner of the deli where
17 I worked at was from the same place that they are from.

18 Q. How do you know whether what Mr. Paru had said was
19 accurate translation by Mr. Espinal?

20 A. Okay. I think that what Mr. Paru said and Mr. Espinal
21 translated was true because whatever I responded to Juan
22 Espinal, he would tell Mr. Paru, and Mr. Paru would say
23 "yes". That's why I think that they were saying the truth.
24 Understand?

25 Q. Yes, I do. There was never at that early day a discussion

Proceedings

73

1 about making deliveries as part of your duties?

2 A. No.

3 Q. There was never any discussion about washing dishes that
4 day?

5 A. That day, yes. Regarding -- since the business just
6 started up again -- well, they told me depending on how the
7 day would turn out, I would help out the few dishes that would
8 come up and continue cooking.

9 Q. Was there any discussion about cleaning at the end of the
10 day?

11 A. Yes. That there was.

12 Q. Oh.

13 A. That the business had to be cleaned. Once you finished
14 your shift of work, leave everything clean and organized to
15 start up the next day.

16 Q. So except for you, Mr. Espinal, and Mr. Alam, who else
17 was around to do the same functions?

18 A. At the beginning there was this person from their same
19 country who was the person that helped us -- helped them --
20 make deliveries. I don't know the person's name. Honestly, I
21 don't know because the young man was there for a few days, and
22 I did not see him anymore.

23 Q. So when you were hired, the job description was more
24 cooking and doing chicken and fries besides than doing side
25 peripheral work, such as, deliveries, cleaning, washing

Proceedings

74

1 dishes, and whatnot; is that correct?

2 A. Yes. Exactly. That is correct. Cooking.

3 Q. So you were hired as an expert in food making?

4 MR. ANDROPHY: Objection. Expert characterization.

5 MR. MOULINOS: As knowledgeable in food making. I'm
6 sorry.

7 THE WITNESS: Can you repeat the question?

8 BY MR. MOULINOS:

9 Q. So the function for your being hired was to perform
10 substantive cooking functions and not peripheral work, such
11 as, cleaning, washing dishes?

12 A. Yes. Exactly. It was just for cooking when they hired
13 me.

14 Q. And the cooking was comprised of making sandwiches and
15 making hamburgers, correct?

16 A. Of course. Exactly. French fries and whatever food that
17 was sold there.

18 Q. What else was sold there?

19 A. They sold fried chicken.

20 Q. Except for frying the chicken, the French fries, what
21 other cooking did you do?

22 A. Well, that was everything that I cooked: Fries; chicken
23 wings; sandwiches; hamburgers. That's what I would make
24 there. That's what I was doing at the beginning.

25 Q. And what sandwiches did you ever make there?

Proceedings

75

1 A. Sandwiches that were sold there, which turkey, cheese,
2 lettuce, tomato, mayonnaise. There was other type of meats
3 that was sold.

4 Q. Such as what other meat was sold?

5 A. Roast beef, steak; what they sold. From what I remember,
6 the sandwiches that were there.

7 Q. The steak was part of a sandwich or was it grilled?

8 A. No. It was grilled. You would prepare it on the grill.

9 Q. And that was on the menu?

10 A. It was on the menu, yes.

11 Q. When is the next time after this first day that you met
12 Mr. Paru?

13 A. Specifically, when I encountered the man, no, but the man
14 would come to the business every afternoon.

15 Q. Every afternoon?

16 A. Yes, every afternoon. I saw him until the day I stopped
17 working April 24th, 2013. Yes. When I finished April 24,
18 2013, that's when I stopped seeing him.

19 Q. I'm going to repeat this to make sure we understand the
20 language, sir: Everyday from the middle of August 2012 until
21 April of 2013, you saw Mr. Paru at the store?

22 A. Yes.

23 Q. And how many hours each time?

24 A. I'll repeat: There were times he would stay two hours,
25 three hours, up to four hours maximum, the man was there.

1 Q. And what did he do when he was there?

2 A. There were days that only for two hours, he would stay,
3 and then the man would leave.

4 Q. Okay. What did he physically do during those two to four
5 hours everyday for these months he visited the store?

6 A. Well, the little I saw was him chatting with Juan Espinal
7 and Alam, and they would chat about the business; how it was
8 moving; how he wanted them to work; giving instructions of
9 work.

10 Q. Would it be fair to say that Mr. Paru was socializing
11 with Mr. Alam and Mr. Espinal?

12 A. No. Not being -- it's not the answer you're saying. No.
13 Because we were workers, and he would give the order of what
14 each of us had to do, but never that they were having some
15 type of -- how can I say, some type like if they were
16 associating or they were business partners, no.

17 Q. Okay. Then let's see if I understood you correctly. Mr.
18 Paru for two to four hours would give orders to whom?

19 A. To who? He would talk to Mr. Alam. He would talk to --
20 he would chat to Mr. Espinal, and then Espinal would call me
21 to tell me what he wanted to me, what he wanted me to do
22 through him is how he told me.

23 Q. Then for the rest of the hours that you worked, how would
24 you know what you had to do when Mr. Paru was not there?

25 A. Because he would leave the instruction every afternoon he

Proceedings

77

1 would come. He would say for tomorrow we're going to do this
2 and this. Whatever was done in the restaurant.

3 Q. And when Mr. Paru was no there, who gave you any
4 instructions, what to do for that day?

5 A. No one would give me instructions because the day before
6 when he would arrive, he would give the instructions and, one,
7 as a worker would already know what you had to do.

8 Q. All right. So let's see if we got the math together.
9 Your shift was for seven o'clock in the morning until 11
10 o'clock at night; is that correct?

11 A. Yes.

12 Q. That would make it 11 plus five -- 16 hours a day
13 religiously working at this store everyday of the week; is
14 that correct?

15 A. It's correct. Yes.

16 Q. Mr. Paru visited, according to your testimony, between
17 two and four hours everyday. Are we correct so far?

18 A. Can you repeat it again to be able to understand it
19 correctly?

20 Q. Mr. Paru visited everyday the store between two to four
21 hours.

22 A. Yes

23 Q. Let's assume the maximum of four hours; if we subtract a
24 16-day shift from four hours, that makes it 12 hours he was
25 not there.

1 A. Yes. He wasn't.

2 Q. Can you tell us what instructions were given to you for
3 things to do for 12 hours everyday of the week?

4 A. Okay. The instructions he gave me was to cook, to
5 perform the best as possible because based on that, that's how
6 they were going to get the clients and that everyday we should
7 leave clean everything that was not used so that the next day,
8 we could start the day. Everything clean.

9 Q. So everyday, he had too repeat the same message during
10 these two to four hours.

11 A. He wouldn't repeat everyday. He -- the order he would
12 give was to be done everyday, and, one, as a worker, I'll
13 repeat again: You would do the performance and already knew
14 what was the job you had to do. It wasn't necessary for me to
15 be told everyday cook this, clean there, no. Because I
16 already knew what my obligation was as my job.

17 Q. Isn't it true that you rarely saw Mr. Paru and you're
18 manufacturing on the stand this scenario today, sir?

19 MR. ANDROPHY: Objection. Argumentative.

20 THE COURT: I'll permit this one question, but I'll
21 draw my credibility findings myself. You can answer that
22 question.

23 THE WITNESS: Where do you want me to start? Yes.
24 Can you repeat the question again?

25 BY MR. MOULINOS:

1 Q. Yeah. I will rephrase it. How many times did Mr. Paru
2 have to give instructions to you to repeat the same thing over
3 and over again over the months? I'm just trying to get an
4 answer to that?

5 A. What he would tell me some two to three times a week, he
6 would tell me what had to be done.

7 Q. That's it?

8 A. Yes, that's it. Of course, in the passing of the days
9 when I started to cook fried chicken, he would tell me the
10 manner on how to wash the chicken, how to prepare the chicken,
11 so as to then cook it afterwards.

12 Q. That was in English or Spanish?

13 A. No. That was in English through the translation of Mr.
14 Juan Espinal.

15 Q. In other words, Mr. Espinal had an additional function at
16 this job, translating Mr. Paru for you, correct?

17 A. Regarding translating, yes. Because regarding work, each
18 one knew what they had to do, and he did not give me
19 instructions of anything.

20 Q. If I understood you correctly, when Mr. Paru was not
21 there at the store, you had no boss, correct?

22 A. I did not have a boss you can say in quotations because no
23 one gave me orders because I already knew because the order
24 was given to me previously by him, and I knew he was my boss.

25 Q. And Mr. Espinal never gave you an order outside of Mr.

1 Paru; is that your testimony?

2 A. No. Mr. Juan Espinal did not give me any order when Mr.
3 Paru was not there.

4 Q. How about Mr. Alam, did he ever give you any order during
5 these six to eight months?

6 A. No. No order.

7 Q. How did you know where you had to go to make deliveries?

8 A. When I started doing deliveries when they told me I was
9 going to start to do deliveries, it was really hard for me
10 because I really did not know the area of that area, Long
11 Island City. It took me a week to learn part of the streets
12 so that I would be able to do the deliveries.

13 As a matter of fact, there were days, sometimes I would
14 bring back the deliveries because I would take too much time
15 because I couldn't find the address.

16 Q. Sir, my question was who gave you the order to make a
17 specific delivery?

18 A. Well, in this case, Mr. Juan Espinal would tell me here's
19 the delivery that has to be done. He would give me the
20 address, the number, the information of the house, and that's
21 how I would go.

22 Q. And when Mr. Paru was not there, how would you know how
23 much fried chicken to make for a specific order?

24 A. Because he -- I'll repeat -- he would come everyday, and
25 he would tell me what was the procedure of cooking and the

1 amount that would be placed in the fryer.

2 Q. For the rest of the 12 hours for the day, correct?

3 A. Yes. For the other 12, he would give me the instructions.
4 I'll repeat, it wasn't necessary for him to tell me everyday,
5 two, three times a week, what had to be done.

6 When I started cooking the fried chicken, yes, everyday,
7 he would tell me, no. If he saw me make a mistake, he said,
8 no, wash it like this or like this that or like that that.

9 Q. So if I went into a Zappo's(Phonetic) Pizza and I ordered
10 fried chicken, would I be seeing you or would I be seeing Mr.
11 Juan Espinal or Mr. Alam?

12 A. No. Mr. Juan Espinal and Alam were the ones in the front
13 part assisting people.

14 Q. So would they tell you what to cook?

15 A. Yes. They would pass over the order to me. They would
16 say there's an order for hamburger that will have lettuce and
17 tomato, ketchup.

18 Q. So isn't it fair to say that throughout the day that all
19 of the orders that you filled had came from Mr. Alam and Mr.
20 Espinal?

21 A. Can you repeat the question, again?

22 Q. Throughout the day when orders needed to be filled, these
23 were given to you either by Mr. Espinal or Mr. Alam; isn't
24 that correct?

25 A. Yes. He would pass me the paper or the note where he

1 would write down the delivery and what he wanted me to do.

2 Q. I thought you were a cook of chicken.

3 A. I'll repeat: I would cook hamburgers, fries. I would
4 cook fried chicken.

5 Q. And who would tell you what to cook, Mr. Paru or the
6 other two gentlemen?

7 A. I don't understand the question regarding what to cook;
8 what are you referring to?

9 Q. I'm trying to understand what Mr. Paru instructed you to
10 do for 12 hours when he was not there. What cooking did you
11 do pursuant to his orders?

12 A. No. What he would tell me, you have to do the job right.
13 I'll repeat again: You have to do job well. Whatever the
14 guys ask you for deliveries, you have to do it as fast as
15 possible, the best possible, because that way we will have a
16 lot of clients.

17 Q. Did that happen between two to four hours on a daily
18 basis, correct?

19 A. How? The instruction the man was giving? I don't
20 understand.

21 Q. Yeah. That's exactly right.

22 A. Yes. The instructions, but not the four hours, the three
23 hours, or the two hours was he on top of me.

24 Q. And the conversation with Mr. Paru was uniformly went
25 through the translation of Mr. Espinal?

1 A. He would translate with the three people present.

2 Q. And Mr. Espinal speaks English well; is that correct?

3 A. He doesn't speak -- well, from what I know, he doesn't
4 speak good, good, but he would translate what Mr. Paru would
5 tell him.

6 Q. And how do you know the translation was accurate?

7 A. Well, I'll repeat once again: When he would tell me what
8 Mr. Paru was saying and I would answer Juan, any answer that
9 I gave, Mr. Paru would say it's fine.

10 Q. All right. Let's move to another area, Mr. Oaxaca. The
11 business was transacted, essentially, in cash; is that
12 correct?

13 A. Yes. Correct.

14 Q. And you were paid daily or weekly in cash?

15 A. Weekly in cash.

16 Q. What day was the payment made to you?

17 A. Saturdays or Sundays.

18 Q. At what time, if any?

19 A. Yes. There was a time, before closing the business;
20 before starting the cleanup.

21 Q. And if you worked up to 11 p.m. everyday of the week,
22 roughly what time was the cash payment made to you for the
23 weekly salary on a Saturday or a Sunday?

24 A. Saturday, Sunday, more or less 10 o'clock in the night.
25 That's when he would pay me.

1 Q. So Mr. Paru was at the store every Saturday or Sunday at
2 10 p.m.; is that correct?

3 A. Yes. He would come and give me what my payment was
4 because he would pay me directly.

5 Q. And, also, he was at the store every two to four hours in
6 the afternoon everyday?

7 A. Yes.

8 Q. Why would he have to come back at 10:00 p.m. to give you
9 the salary when he was there at 2:00 p.m.?

10 A. Okay. He had to return because he had to put together --
11 well, I don't know specifically if what he put together in the
12 course of the night before closing if that's what he paid me
13 with, I can't specify.

14 Q. But he was there religiously every Saturday or Sunday at
15 10:00 p.m.?

16 A. Yes. To give me what was mine.

17 Q. And he paid \$600 every week from day one to April 2013.

18 A. Until -- yes, exactly. Until April 24 when I left. Well,
19 when my accident happened. That's when he paid me.

20 Q. Now, was the 600 given ordinarily in hundreds or something
21 else?

22 A. No. The bills would vary. He would not always give me
23 \$100 bills; dollars; ten's; 20's. That's why I was saying I
24 don't know if he was taking it all from the register or he
25 brought some from someone else. I don't know.

1 Q. Now, let's make sure I understood you right. From day to
2 the last day of work, it was always at \$600 a week for the
3 hours of 7:00 a.m. to 11:00 p.m.; correct?

4 A. Yes. The payment he gave me up to the last day, yes.

5 Q. I understood earlier you said that around January 2013,
6 Mr. Paru slashed your hours in half.

7 MR. ANDROPHY: Objection. Mischaracterizes
8 testimony.

9 THE COURT: Did he reduce your hours?

10 THE WITNESS: Well, no, he did not tell me this
11 before -- well, the attorney did not say this before until I
12 heard him now and, precisely, Mr. Paru cut my hours at the
13 end of the month of January up to the 24th of April when I
14 stopped working at that place.

15 Q. So what hours did you work then after January 2013?

16 A. After January, he gave the schedule 10 to the morning to
17 11 at night.

18 Q. So there was a reduction of only three hours; is that it?

19 A. Yes. Three hours from work were cut.

20 Q. And the salary stayed the same?

21 A. Yes. It stood the same. He cut my hours because I asked
22 him for a raise, and he said, you know what, I'll cut the
23 hours of work.

24 Q. I didn't hear the last answer. I'll cut the hours in
25 half?

Proceedings

86

1 A. I'll cut the hours of work.

2 THE COURT: I'll cut the hours of work.

3 MR. MOULINOS: Oh, okay.

4 BY MR. MOULINOS:

5 Q. Do you have any records, anything in writing, showing your
6 version of the hours that you worked at this place?

7 A. No. Written, I have nothing. Everything was orally from
8 the day I entered and was hired, it was all orally. There was
9 no contract. That's why I don't have no paper that would say
10 that I worked this hour to this hour. I don't have any paper.

11 Q. And the days that you worked at this pizza place, who else
12 worked with you if anyone?

13 A. What day specifically or what time are you trying to tell
14 me?

15 Q. Everyday of the week from August 2012 to April 2013.

16 A. No. Until the day that Mr. Alam, another worker from
17 their same country arrived, and when Mr. Juan Espinal left,
18 the sister of Mr. Paru came to work, Mr. Paru's niece, and
19 another -- how can I say -- from their country.

20 Q. All right. Let's rephrase it slightly. Can you tell us
21 as far as you recall, Mr. Espinal worked with you from when
22 to when?

23 A. When I entered to work, he worked with me up to February.
24 I remember correctly the first week of February, he stopped
25 working with me.

Proceedings

87

1 Q. So was he with you everyday of the week?

2 A. Everyday of the week, Juan Espinal was there, and Mr.
3 Alam. We were the three ones who worked there until Alam
4 left, and then until Juan Espinal left.

5 Q. All right. You told us when Mr. Espinal left, the first
6 week of February 2013?

7 A. If I remember correctly the first or second week, but it
8 was in February, the beginning of the month.

9 Q. Fair enough. And when did Mr. Alam left the pizza place?

10 A. Alam left, if I'm not mistaken, in the month of October.

11 Q. Of 2012.

12 A. Of 2012, yeah.

13 Q. So he was there roughly August, September, and the middle
14 of October, correct?

15 A. Yes.

16 Q. Do you know why Mr. Alam left?

17 A. No. I'm not aware of the motive why he had left.

18 Q. Are you aware why Mr. Espinal left?

19 A. No. I don't know that either because I'm not used to
20 asking the motives, why they left, this and that. I just
21 dedicate myself --I only worry about what's mine.

22 Q. And when in February 2013 Mr. Espinal left, how did you
23 communicate with Mr. Paru?

24 A. I said it before, and I'll repeat it again: With the
25 passing of the months, I made myself able because I did not go

1 to school, made myself able to speak -- to study English with
2 some books that I have at home, and that is why I learned to
3 communicate with Mr. Paru, and Mr. Paru, when he would
4 speak to me, some words here and there, he would say in
5 Spanish, so that he would help me understand.

6 Q. Oh, let me see if I understand: Did you say you started
7 listening to tapes to learn English?

8 MR. ANDROPHY: Objection. Mischaracterizes.

9 MR. MOULINOS: I misunderstood what he said.

10 THE COURT: He didn't say that.

11 BY MR. MOULINOS:

12 Q. Could I get -- how did he start learning English, the
13 books he said or something like that?

14 A. Yes. Books and with the passing of days listening to
15 people and asking as well as with friends what does this word
16 mean or how can I pronounce this word. That's how I learned
17 the little bit that I've learned til now because the majority
18 of jobs I have been with, you can say -- how do you say with
19 people who speak my language.

20 Q. But didn't you say you started using books to learn the
21 language; did I understand you right?

22 A. Yes. I started -- I'll repeat again. I used books with
23 the help of friends that I would ask questions to -- how do
24 you say "X" word.

25 Q. And this would be a systematic method of learning English?

Proceedings

89

1 MR. ANDROPHY: Objection.

2 THE COURT: Why don't you rephrase, Mr. Moulinos.

3 MR. MOULINOS: All right. Let me get to point
4 quickly.

5 BY MR. MOULINOS:

6 Q. When did you find the time to read books to learn English?

7 A. When I would get -- once my -- once I would finish my time
8 at work, I would stay awake one, two hours, not everyday to
9 study a bit these books.

10 Q. So you would come out of work at 11 o'clock at night --
11 how long did it take you to get home?

12 A. Yes. Travel home, I would take half an hour.

13 Q. And at home, 11:30, let's say, you would start reading
14 books to learn English?

15 A. No. Not precisely 11:30.

16 Q. What time?

17 A. I would start 12, 12:30.

18 Q. And then you would say one, two hours whenever you studied
19 to learn English?

20 A. Yes. I would stay. As a matter of fact, I would finish
21 very tired because of the shift at work, and sometimes I would
22 end up just falling asleep with the book on my chest.

23 Q. And then seven o'clock in the morning, you'd be back at
24 work in order to do your usual functions?

25 A. Yes.

1 Q. And when did you start this mode of study?

2 A. I started studying the books when I started working at the
3 deli -- I'm sorry -- at the grocery that's located on 37th
4 Avenue and Ninth Street. There I met a friend who told me
5 that I should learn English, and he was the one that brought
6 me those books.

7 Q. Have you worked after the accident?

8 A. After the accident -- after a month-and-a-half that I was
9 home without working, yes, I started working because I saw the
10 need to support my family and support myself from my expenses.

11 Q. Oh, are you married?

12 MR. ANDROPHY: Objection. Relevance.

13 MR. MOULINOS: Creditability is the issue here.

14 THE COURT: I'll permit that question.

15 BY MR. MOULINOS:

16 Q. Do you have a family, sir?

17 A. Yes. I have family far from here. They are in Mexico.

18 Q. Do you have any family here living with you on a daily
19 basis?

20 A. No. That live with me daily, I don't have family. I have
21 brothers who are in Connecticut.

22 Q. Okay. And what is the next job you found after the
23 accident?

24 A. The next job I found was a bakery that presently is where
25 I'm working now.

Proceedings

91

1 Q. And what do you do there?

2 MR. ANDROPHY: Objection as to relevance.

3 MR. MOULINOS: I'm finishing it up, Judge.

4 THE COURT: Just finish it up quickly.

5 BY MR. MOULINOS:

6 Q. Okay. What do you do there, sir?

7 A. I started cooking like pastries filled with fruit, and
8 then the opportunity presented itself for me to cook bagels.

9 MR. MOULINOS: Okay. No further questions, Judge.

10 MR. ANDROPHY: Brief redirect.

11 THE COURT: Okay. Let's finish up, then.

12 REDIRECT EXAMINATION

13 BY MR. ANDROPHY:

14 Q. You testified you worked at a deli in Jackson Heights
15 before working at Papo's Chicken, correct?

16 A. That I work previously at a deli?

17 Q. Yes.

18 A. Yes. My last job -- well, before the deli, it was a
19 grocery, and from the grocery, I went to -- I found that job
20 at the pizzeria.

21 Q. Okay. Thank you for that correction. That last job
22 before at Zack's Pizza and Papo's Chicken, was that the job in
23 Queens?

24 A. Yes. It was in Jackson Heights.

25 Q. And how long did you work there?

1 A. For four-and-a-half years I worked at that grocery.

2 Q. Okay. Thank you. Now, when you worked at Papo's Chicken,
3 did your job regularly change from day-to-day or did it stay
4 the same?

5 A. Yes. With the passing of the days, my job changed a lot,
6 what my responsibilities were.

7 Q. Okay. You gained more responsibilities?

8 A. Yes. More responsibilities were given to me, yes.

9 Q. When the customer came and let's say ordered fried
10 chicken, did you need to be instructed every time on how to
11 make the fried chicken?

12 A. No. Because since I kept getting experience at the
13 beginning, yes. They gave me instruction, but with the time,
14 I gained experience, so I no longer needed anyone to make it.

15 Q. When Mr. Paru Khan would come to the restaurant,
16 approximately how much time would he spend with you?

17 A. With me, you could say 15 -- 10, 15 minutes while he gave
18 me instructions through Mr. Juan Espinal who would help me
19 with the translation, and that would be the time that I would
20 be standing next to them.

21 MR. ANDROPHY: Okay. Thank you. I have no further
22 questions.

23 THE COURT: Thank you. I think this is probably a
24 good time to take a lunch break.

25 MR. MOULINOS: Judge, may we leave our stuff here?

Proceedings

93

1 THE COURT: Yes, you may. And if there's anything
2 valuable that you need, we can lock it in the closet.

3 MR. MOULINOS: No just papers.

4 MR. ANDROPHY: I'm okay. I'll trust no one will run
5 off with the computer.

6 THE COURT: Okay. Or we can even lock the courtroom,
7 and then you can report to chambers, and we'll unlock or if
8 you want to leave it opened, that's fine. It's up to you.

9 MR. MOULINOS: What time do you want us back, Judge?

10 THE COURT: I'll give you until 2:30.

11 MR. MOULINOS: Whatever you say goes.

12 THE COURT: I eat in chambers so I'm happy with a
13 short of time as the rest of you can live with.

14 MR. ANDROPHY: 2:30. And if we're here before, we'll
15 let the Court know.

16 MR. MOULINOS: Okay.

17 THE COURT: That's fine.

18 MR. MOULINOS: Thank you.

19 (Whereupon, the lunch recess was taken at this time;
20 1:20 p.m; thereafter, court resumed as follows:)

21 (Continued on the following page.)
22
23
24
25

Proceedings

94

1

2

AFTERNOON SESSION

3

(In open court.)

4

(Judge MARILYN D. GO enters the courtroom.)

5

THE COURT: All right. Are we ready to proceed?

6

MR. ANDROPHY: Yes.

7

8

9

10

11

12

13

14

Just one housekeeping matter we were discussing just before. I wanted to know if Your Honor has any sense of if you intend to, at the end of trial, rule from the bench or if you would want us to submit any post-trial briefs or order a transcript. We want to know so we can order the transcript in sufficient time that it suits all your purposes and at the same time, both sides, if the transcript is not needed immediately, would rather save a little money.

15

16

17

18

19

THE COURT: Sure. If I feel I need post-trial briefs and proposed findings of fact, I will give you enough time to order the transcript at a leisurely pace and I think our court reporters would appreciate that, too. So, we will discuss this again tomorrow.

20

I assume we are on schedule for completion tomorrow?

21

MR. ANDROPHY: I would expect, so.

22

THE COURT: Okay. Then let's proceed.

23

MR. ANDROPHY: Plaintiffs call Mr. Alam.

24

(Witness takes stand.)

25

THE COURTROOM DEPUTY: Please, raise your right

1 hand.

2 **H A L I B U L A L A M,**

3 called by The Plaintiff, having been
4 first duly sworn, was examined and testified
5 as follows:

6 THE COURTROOM DEPUTY: Please, state your name for
7 the record.

8 THE WITNESS: Halibul Alam.

9 THE COURTROOM DEPUTY: Thank you, have a seat.

10 DIRECT EXAMINATION

11 BY MR. ANDROPHY:

12 Q Good afternoon, Mr. Alam.

13 A Good afternoon.

14 Q Do you know the gentleman Mohammed S. Kabir who testified
15 earlier today?

16 A Yes, I know him.

17 Q And how do you know him?

18 A I used to selling the fruit and vegetables in the
19 40th Street and Queens Boulevard under the subway. So, he's
20 my customer, he's always come. And sometimes coming to buy
21 the fruits of me.

22 Q Did you ever discuss with him your business?

23 A No.

24 Q Did he ever discuss with you businesses that he was
25 involved in?

1 A Yes. He always ask for me, he has two, three business
2 here, he always tell me about the one, is I think two business
3 Brooklyn, one in the Vernon Boulevard in Points. He always
4 tell me about that business.

5 Q Is the business he discussed with you on Vernon
6 Boulevard, is that the Hudson Side Cafe business?

7 A Right. Papo's Pizza and Papo's Fried Chicken.

8 Q And when was the first time he spoke with you about the
9 Papo's chicken business?

10 A He -- I know -- he always tell me he has a business, so
11 that's -- I didn't know his business. But like a before, like
12 end of the 2012, I know he has a business.

13 Q Did there come a time --

14 A Sorry, no end of the, beginning of 2012.

15 Q Okay. Did there come a time that you had discussions
16 with him about you possibly going to work for Papo's Chicken?

17 MR. MOULINOS: Objection.

18 A He always need to look for the good person, nice person
19 to work for him.

20 THE COURT: Overruled.

21 A So he saw like, how I treat my customer. That's why he
22 always offer me to work for him.

23 Q Do you recall when the first discussion was that you had
24 with Mr. Kabir about working for Papo's Chicken?

25 A Like June. 2012.

Proceedings

97

1 Q And where was that conversation?

2 A That's my fruit stand.

3 Q Was anyone part of that conversation?

4 A No, only me and him.

5 Q And do you recall what he said to you?

6 A He say his store not doing too good, around the business
7 that people no were good. So, he say I need a good person to
8 work for me, so can you find out, you and other people for me.

9 Q And describe what kind of work he would want you to do.

10 A Like, pizza and like, fried chicken and selling like,
11 salad, coffee, everything.

12 Q Did you have another meeting with --

13 MR. ANDROPHY: Strike that.

14 Q Did you have another discussion with Mr. Kabir at any
15 point about working at Papo's Chicken?

16 A No, no anywhere.

17 Q So, what happened next regarding you possibly working at
18 Papo's Chicken?

19 A He take me to -- one day he say -- I say I don't know
20 what. One day he take me to his store and he show me how they
21 working, the people. So, then at that time I saw the people
22 working in the -- like, without gloves, lot of dirty things.
23 So I tell him the people really was no good. So, after that,
24 he offer me to please help to me and come to work here,
25 please.

1 Q Did there come a time that you began to work at
2 Papo's Chicken?

3 A After that, I think Health Department problem shut down
4 they store. So, he come to me to my fruit stand to tell me to
5 please come work my store.

6 Q And then what happened next with regard to you working at
7 Papo's Chicken?

8 A Yeah, then I start working there like June, July, August,
9 middle of the August, I was start working with him.

10 Q Did you have any more discussions with him before you
11 started working?

12 A No. I have only talk with him the how, how many hour,
13 what I do. That the work I talk to him.

14 Q Did you have discussions with anyone else before you
15 started working at Papo's Chicken?

16 A Before that one guy, the Paru, he's also there.

17 Q So, did you meet with Paru separately --

18 A No.

19 Q -- or together with Mr. Kabir?

20 A No, together. He bring him to my fruit stand.

21 Q Do you recall when that meeting was?

22 A Like June. The end of the June, I think.

23 Q And did you meet with Mr. Paru any other times before you
24 started working?

25 A No.

Proceedings

99

1 Q You mentioned you had a fruit stand in Queens. When did
2 you start operating that fruit stand?

3 A 2007.

4 Q When did you stop operating that?

5 A Before I go work in the chicken.

6 Q Okay. Was it like a day before, a week before?

7 A No, like weeks two weeks before.

8 Q Okay. So, do you recall what your first day of work at
9 Papo's Chicken was?

10 A Excuse me?

11 Q Do you recall the date or the month that you started
12 working at Papo's chicken?

13 A The middle of the August, I think second week of the
14 August.

15 Q And did you meet with anyone on your first day at
16 Papo's Chicken?

17 A Yes.

18 Q Who did you meet with?

19 A The Paru is there.

20 Q And what, if anything, did you discuss with Paru when you
21 started working?

22 A No, because the nearest store, I go near there so they
23 can show me how I work, what I work, what I do.

24 Q Was anyone else there?

25 A At that time, the other co-worker, like, Espinal, Juan

1 Espinal at that time.

2 Q Had he been working at Papo's Chicken before or was that
3 also his first day?

4 A No, we start together, same thing.

5 Q You mentioned the Health Department had closed down the
6 restaurant. Do you recall when that was?

7 A Before we join there. After, they have a new inspection,
8 and thing pass. Then we start work.

9 Q Do you know if the restaurant had any renovations before
10 you started?

11 A When the Health Department shut down. So that time
12 they're doing little bit renovation inside, the owner doing
13 this one.

14 Q Did you pay for any of those renovations?

15 A No.

16 Q Did you oversee those renovations?

17 A No.

18 Q Did you direct how those renovations would be carried
19 out?

20 A No.

21 Q Did you ever discuss with Mr. Kabir any other businesses
22 that you were involved with?

23 A No.

24 Q Did you ever, were you ever a partner in the business in
25 a catering business?

Proceedings

101

1 A Never, ever.

2 Q Were you ever a partner in any business with your nephew?

3 A No.

4 Q Did Mr. Kabir ever tell you that you would be purchasing
5 the business of Papo's Chicken?

6 A No.

7 Q Did Mr. Khan ever say anything like that?

8 A No.

9 Q When you began working at Papo's Chicken, did anyone
10 discuss with you the hours that you would work?

11 A The payroll man coming, he's tell me what time we open,
12 what time we close.

13 Q Did Paru discuss with you what you would be paid?

14 A How much getting I'm?

15 Q How much you would be paid?

16 A He's tell me the beginning he give the 350 and the
17 business going up, so he giving more money to my salary.

18 Q Were you paid 350?

19 A Yes, wage.

20 Q And is that \$350 per week?

21 A \$350 per week, yes.

22 Q Did your pay ever change?

23 A Excuse me?

24 Q Did your pay ever change while you worked at Papo's
25 Chicken? Did the amount of your pay ever change?

Proceedings

102

1 A That's a fixed amount they pay me, but they pay me like,
2 you know, mixed money to always to keep me there, in the
3 envelope every week.

4 Q Okay. Were you paid the same amount each week?

5 A Yes.

6 Q Did you ever ask for a raise?

7 A Went little bit, so then I ask them. They don't address
8 me, then I left the store.

9 Q And when was that?

10 A October, middle.

11 Q Of what year?

12 A 2012.

13 Q How were you paid?

14 A How they pay?

15 Q Was it check or cash?

16 A Cash.

17 Q When you were paid, did you receive any statement of how
18 much you were being paid?

19 A No.

20 Q What hours did you typically work at the restaurant?

21 A I work like, 7:00 in the morning and like, 11:00 the
22 night.

23 Q What days did you work those hours?

24 A I work six days.

25 Q Which day of the week did you not work?

1 A Saturday I'm not work.

2 Q Did your hours change during the time you worked there?

3 A No, because I working like, two months there and they
4 never change my hour.

5 Q What was your job at Papo's Chicken?

6 A I do mostly the counter work like, make salad, coffee and
7 take the money, too. Cashier job.

8 Q What did you do as the cashier?

9 A I take the money to customer pay me the food, they buy
10 it.

11 Q What would happen with the money that would be in the
12 cash register?

13 A Like after 3:00 o'clock, I sat down make a G, and how
14 much money I make a money to lunch. I put in the one in
15 envelope and mark down how much there, and I keep in the draw.
16 My boss coming, I give him.

17 Q So, what would you do with the envelope?

18 A I keep it, the money in the envelope, to wait for my boss
19 to come and pick the money.

20 Q Okay. And then would anything happen in the evening with
21 the money in the cash register?

22 A No. And we also, same way I do, and keeping the money
23 for next day. He pick it up, that money, also.

24 Q When you say your boss would pick it up, who are you
25 referring to?

Proceedings

104

1 A My boss in the Paru that time is around the business.

2 Q How often would he come to the restaurant?

3 A Most probably, every day.

4 Q Usually, around what time would he come to the
5 restaurant?

6 A Like afternoon, evening. Most of the time afternoon,
7 evening.

8 Q And how long would he stay at the restaurant?

9 A One, two hours. Sometimes less, sometimes more.

10 Q Okay. What would he do at the restaurant?

11 A He coming, he check the all the stuff coming, what's
12 coming store, everything he check and how much money we make
13 morning to afternoon. He check everything. And how we cook,
14 how much food we have. Next, there were any to order. So, he
15 fix everything.

16 Q Were there other people who worked at the restaurant when
17 you did?

18 A So, when I start that time, other guy work also with us.
19 He's from Bangladesh guy. His name, I think, Shamin. He stay
20 like, two weeks, then he left.

21 Q So, two weeks when you started?

22 A After I start, then I saw him two weeks. Then after
23 that, I don't see him any more.

24 Q Okay. Did anyone else work with you when you started?

25 A Yeah. I work with the Juan Espinal and the other guy,

1 this guy, Carlos Oaxaca.

2 Q Okay. Was Carlos there on your first day?

3 A No. He coming like, I think one, two days after.

4 Q Okay. What was Mr. Espinal's job at the restaurant?

5 A He making pizza and take the order for the people to the
6 coming to order for us.

7 Q Did you know Mr. Espinal from before Papo's Chicken?

8 A No, we working together. So, before that one day we work
9 together, that's why I knew him. So I selling the fruits,
10 sometimes he is in the driving van, so help me to the, bring
11 the fruits and help me little bit.

12 Q Had you ever been business partners with Mr. Espinal?

13 A Never, no.

14 Q Did you ever form any corporation --

15 A Nothing.

16 Q -- with Mr. Espinal?

17 A No.

18 Q When did you first meet Carlos Oaxaca?

19 A I think first week in the when we start the work.

20 Q Did you decide how much Carlos would be paid?

21 A No.

22 Q Do you know who decided that?

23 A Paru.

24 Q Did you pay Carlos?

25 A Never.

Proceedings

106

1 Q Were you in charge of Carlos?

2 A No.

3 Q Did you tell him when to come in and when to leave?

4 A No.

5 Q And what were Carlos' responsibilities in his job?

6 A So, because we working like a crew worker. He's doing
7 his job, I do my job and Oaxaca do one job. So, that's all we
8 do.

9 Q So, what was Carlos' job?

10 A Carlos work making the kitchen side. He doing like the
11 fried chicken and making the sandwich, the burger. And Juan
12 Espinal making the pizza and taking the order for customer. I
13 making the salad, coffee and the register money.

14 Q Were you in charge of supervising either Mr. Espinal or
15 Mr. --

16 A No, no.

17 Q -- Oaxaca?

18 A We don't have any supervisor at that time.

19 Q Did either of them supervise you?

20 A No.

21 Q Did you have the authority to hire employees?

22 A No.

23 Q Did you have the authority to fire any employees?

24 A No.

25 Q Did you ever receive any pay other than your salary?

Proceedings

107

1 A Never.

2 Q Did you ever keep the profits of the restaurant?

3 A No.

4 Q Did you ever make any agreement with Hudson Side Cafe
5 that you would pay them any amounts?

6 A No.

7 Q What would happen to the money that the restaurant would
8 make each day?

9 A So that's the one that we save for the boss, the Paru.
10 He comes to pick it up, every afternoon, evening.

11 Q Did you ever make deposits for Hudson Side Cafe?

12 A I don't do.

13 Q Did you ever pay any bills for the restaurant?

14 A No, I don't pay myself anything.

15 Q Did you ever pay on behalf of Hudson Side Cafe?

16 A No.

17 Q Did Hudson Side Cafe ever have you sign any employment
18 agreement?

19 A No.

20 Q Did they ever give you a document stating how much you
21 would be paid?

22 A No.

23 Q Did they have you sign any documents --

24 A No.

25 Q -- to work for them? Did they ever give you a written

1 statement of how much you were paid?

2 A No.

3 Q Did you see any posters in Hudson Side Cafe about the
4 minimum wage and the overtime?

5 A No, I don't see any poster.

6 Q I'm going to show you a document that's been marked as
7 Defendant's Exhibit E.

8 THE COURT: Defendant's Exhibit E.

9 MR. ANDROPHY: Defendant's Exhibit E.

10 Q Do you recognize that document?

11 A This check I give to the Shahin, that he asked for when
12 the loan, personal loan, so I give him that money. No
13 actually my check. This is my wife check.

14 Q Okay. So, the name on the check, is that your wife's?

15 A Yeah, this is my wife, right.

16 Q And was she your wife at the time that that check was
17 written?

18 A Because the Shahin need some money for I don't know,
19 somehow he asked for me. So they need some money, so he needs
20 some money. So he say help me, so favor me. So, because he
21 go, he always in, a good friend, my good customer, so that's
22 why I asked for my wife can you give some money to help this
23 guy. Then he give to that -- she give me this money to give
24 to Shahin.

25 Q Did you understand what the purpose of that money was?

1 A That's a personal loan. I know him, take for the
2 personal loan.

3 Q Was that loan repaid to you?

4 A Yeah, that, he give me the cash back, yeah.

5 Q And how was that loan repaid?

6 A So, he pay like a little by every weeks, little bit, he
7 finish everything.

8 Q Did he pay in cash or by check?

9 A Cash.

10 Q You mentioned that this was a loan to Shahin. Can you
11 explain, who is Shahin?

12 A The first guy he talked to here today.

13 Q Okay. Is that the same person as Mohammed?

14 A Kabir.

15 Q Mohammed S. Kabir?

16 A Mohammed S. Kabir, yes. His nickname, I think, Shahin.

17 Q Okay.

18 THE COURT: I'm a little confused. The first worker
19 was also called Shamim?

20 MR. ANDROPHY: I think there's two people here with
21 similar sounding names, so maybe we can...

22 THE COURT: So, Mohammed Kabir --

23 THE WITNESS: He's also nickname is Shahin.

24 THE COURT: Shahin, okay.

25 THE WITNESS: So, I don't know his Kabir name. I

Proceedings

110

1 know they call Shahin so that's how I talk to him Shahin.

2 Q Just to clarify, is that the same person you said was
3 working at Papo's Chicken when you started?

4 A No, he's Shamim, this is Shahin. That's two person.

5 THE COURT: Oh, okay, all right.

6 MR. ANDROPHY: Okay.

7 Q I'm going to give you another document, it's Plaintiff's
8 Exhibit 7. Do you recognize the document that I've given you
9 and specifically the second page?

10 A This is the W-2 they give to me for the, my tax return.

11 Q And who did you receive that from?

12 A The middle guy, I don't know his name. He is, he is,
13 he's sitting there.

14 Q Okay.

15 THE COURT: Can you just state for the record who
16 that gentleman is?

17 MR. MOULINOS: This gentleman?

18 THE WITNESS: Yes.

19 MR. MOULINOS: Mr. Sain.

20 THE WITNESS: I don't know his name, but he give to
21 me.

22 THE COURT: Mr. Sain -- S-A-I-N. All right.

23 Q In August 2012, did you personally have a checking
24 account?

25 A No.

1 Q Did you personally have any savings?

2 A No.

3 Q Do you know, did your wife have a checking account?

4 A She has checking account, yes.

5 Q Do you know approximately how much money she had in her
6 account?

7 A Five, six thousand dollars, maybe.

8 Q Did you have any other assets?

9 A No.

10 Q Did you ever have a meeting with Mr. Kabir or Shahin and
11 Paru Khan in the basement of Papo's Chicken?

12 A No, I don't have any.

13 Q Did you ever have any meeting with Mr. Kabir and Paru at
14 a Burger King?

15 A No.

16 Q Why did you stop working at Papo's Chicken?

17 A Because I don't make enough money to survive, so that's
18 why I give up that job.

19 Q After you left Papo's Chicken, did you ever work with
20 Mr. Espinal or Mr. Oaxaca?

21 A No, no.

22 Q What did you do after leaving Papo's Chicken for work?

23 A I was working in restaurant. Like, a food runner.

24 Q Did you manage the restaurant?

25 A Never.

1 Q Before working at Papo's Chicken, did you ever manage any
2 business?

3 A Never.

4 MR. ANDROPHY: No further questions.

5 CROSS EXAMINATION

6 BY MR. MOULINOS:

7 Q Good afternoon, Mr. Alam.

8 A Yes, sir.

9 Q If I direct your attention to Plaintiff's Exhibit 7, do
10 you have a copy of that?

11 A This form?

12 THE COURT: The two forms?

13 Q The W-2.

14 A Yes.

15 Q How much pages is it? I have only one page, am I missing
16 something?

17 MR. ANDROPHY: It's double-sided, I think this is --

18 MR. MOULINOS: I apologize, I apologize, okay. I
19 apologize. Okay, okay, no issue with Exhibit 7.

20 Q I'm a little puzzled, Mr. Alam, you barely begin to work
21 for Hudson Side Cafe in the same exact week that you begin,
22 you issue -- you cause your wife to issue a check for \$4,300
23 denominated as rent. Now, did your wife know Mr. Kabir?

24 A I know Mr. Kabir, but my wife don't write it on anything
25 is there. Only I tell her to give to him amount and sign.

1 And I give to that much money for them. But all I write down,
2 I think they write it, not me.

3 Q The question was, did your wife know Mr. Kabir?

4 A Mr. Kabir is my friend, so I know Mr. Kabir, but my wife,
5 I tell her to my Kabir one of friend, so he need help to some
6 money, so that's why she help me to give him money.

7 Q The question again, Mr. Alam is, did your wife know
8 Mr. Kabir? I didn't ask for the other stuff.

9 A My wife doesn't, no, he come to my fruit stand, so my
10 wife sometimes is there, so that's why she knows the Kabir,
11 too.

12 Q I did not understand. Your wife knew Mr. Kabir before
13 this issuance of this check?

14 A She saw one, two days the Kabir at my fruit stand.

15 Q I didn't understand you. Mr. Kabir knew your wife?

16 THE COURT: She met him one or two times at the
17 fruit stand.

18 MR. MOULINOS: Oh.

19 Q Since 2007?

20 A No 2007. 2012.

21 Q Okay. And how much --

22 A 2007, Mr. Kabir.

23 Q And how much was going to be your beginning salary at the
24 defendant's pizza place?

25 A How much my salary?

1 Q Yes.

2 A Three hundred fifty.

3 Q Per week?

4 A Weeks.

5 Q So, in other words, you go in there to work from 7:00 in
6 the morning until 11:00 o'clock at night, you have no money,
7 you come from selling fruits in the street and just like that,
8 you ask your wife to issue all her savings, which is close to
9 what you said, \$5,000, just to help Mr. Kabir?

10 A Because winter is coming.

11 Q I didn't ask you. Is that true?

12 A Winter is coming, so that's why I thinking to why I still
13 working the outside. Better to working the inside. So,
14 that's why I like to go work there.

15 Q I understand, but who in his right mind working for \$350
16 a week says to the wife issue this man \$4,000?

17 MR. ANDROPHY: Objection.

18 A Because they allow, they got pay me more, but they no pay
19 me more. So because my wife also works, and she help me,
20 that's why I issued the money.

21 THE COURT: Wait just one second.

22 MR. MOULINOS: Okay.

23 THE COURT: If your attorney objects, you should
24 stop and the Court will make a ruling.

25 I will permit that one question, but I don't want

1 you to harass the witness.

2 MR. MOULINOS: No, Your Honor.

3 Q Now, I also understood you said Mr. Kabir paid this
4 amount of 4,300 little by little, over time. Did I hear
5 right?

6 A This no overtime, this my money he take from me, so he
7 give me back.

8 Q So, when did he pay it back?

9 A He give me back the in between while I work there at that
10 time.

11 Q I'm not understanding. You were there only until
12 October.

13 A Two months. Yeah, he give me between these two months.

14 Q Oh, so in two months he paid you back the 4,300?

15 A Yes.

16 Q Little by little?

17 A Like weeks. Week by weeks he give me.

18 Q So, how much money was he giving you a week, if anything?

19 A One week thousand, another week 700, like this. He mix
20 it up always.

21 Q Why don't we get specific and you tell me the exact
22 amounts he paid you and when. Let's do it this way.

23 A Every weeks he pay me like, a thousand dollars.

24 Q Oh, now it's exactly a thousand, not 1,700. It's exactly
25 a thousand?

1 A I don't say 1,700. I say 700, to a thousand dollars, he
2 pay me.

3 Q Can you give us the dates when he paid you and how much?

4 A I don't have any date specific. I don't write it down
5 every day.

6 Q But he paid you by October?

7 A He paid me my money.

8 Q And why would the check say rent?

9 A That's not my wife write it down. I don't write it down.
10 Shahin knows better.

11 Q But that's your wife's signature?

12 A I said it's my wife's signature.

13 Q Okay. And isn't this your wife's script? Handwriting?

14 A This not my wife handwriting.

15 Q How do you know?

16 A I know better my wife handwriting.

17 Q Okay. Now, isn't it true that really this was the first
18 month's rent pursuant to a deal that you had with Espinal and
19 Paru in the turnover of a business?

20 A No.

21 Q It was generosity on your part to help a friend?

22 A No.

23 Q It wasn't?

24 A No.

25 Q Then what was it?

Proceedings

117

1 A This the money I give him the loan for Shahin, not Paru,
2 nobody else. Only Shahin I give him the money.

3 Q When this canceled check returned, did you ever approach
4 anybody and say what is this, what is this writing Kabir? I
5 gave you the money as a loan and now you write Hudson Side
6 Cafe, you write rent, what is this?

7 A Because I knew my money is back, so I don't ask for
8 anything because I get my money back.

9 Q And Kabir was supposed to be your friend?

10 A Used to be my friend.

11 Q No longer a friend?

12 A I don't see him long time.

13 Q When is the last time you saw Mr. Kabir?

14 A I saw when I work in the Hudson cafe.

15 Q Meaning, when this check was given?

16 A I give him the -- when I start. Like, when they have
17 shut down the Health Department. After that, I give him the
18 money.

19 Q If the loan, if this amount of 4,300 was meant to be a
20 loan, why didn't you give it in cash? You were dealing with
21 everything in cash, why a check?

22 A Because this my wife money. That's why she give me the
23 check. This not my money. If my money, I give him cash.

24 Q Now, at about this time in August of 2012, except for you
25 and your wife, were there any other people in your family?

1 Any children, any grandparents or anything?

2 A What happened?

3 Q Did you have a family in August 10th, 2012, other than
4 your wife living with you?

5 A Me and my wife and my daughter.

6 Q And you had a daughter?

7 A Yes.

8 Q Now, you cause your wife to issue a \$4,300 check, which
9 is essentially all your savings, knowing fully well the only
10 thing you're going to get there is \$350 a week from Mr. Paru.
11 Didn't that strike you a little funny?

12 A They told me -- they don't tell me the \$350 they gave me.
13 When I saw in my envelope, I open, I saw 350, I asked them, so
14 this no good enough for me. So, now we open again after
15 Health Department, just new open. So, wait little bit, wait
16 little bit. So, I can't handle, so that's why I gave up after
17 two months.

18 Q Okay. So, let's analyze what you just said. Without
19 knowing your salary, you go to work for a week, you open the
20 envelope and you see \$350?

21 A I saw they give me \$350.

22 Q And you were upset; correct?

23 A Because --

24 Q Were you upset?

25 A Because --

1 Q The question, sir, is were you upset when you opened the
2 envelope in one week hard work and you see 350?

3 A I answer because I ask him how much you going to give me.
4 He say wait for little bit, I give you more. So, that's why I
5 listen to them, so that's why I wait.

6 Q Oh, you were just listening to who? Who's them?

7 A Because I only give up my work at the fruit business, so
8 now I have a new job, so if I leave this one, so I have a
9 nothing job. So what I should do?

10 Q Why don't you quit that day when you saw 350 and you go
11 back to your fruit business?

12 A How I go, because I give to return everything, so how I
13 go to do it.

14 Q You were only out of work for a week.

15 A I am not own the business.

16 Q Sir, why didn't you go back to the fruit business instead
17 you stayed all the way to October?

18 A Because the fruit business is, the permit no is mine.
19 The Health Department take back the permit. I can't work
20 without permit.

21 Q I don't understand. What is this with the permit?

22 A Because when I work the fruit stand pushcart, there's a
23 one permit number in the permit. This is not my own. I take
24 for somebody else. So, he take it back, his pushcart.

25 Q Are you saying that you were working as a street vendor,

Proceedings

120

1 not with your license, but with somebody else's license?

2 A License is mine, permit not mine.

3 Q I see.

4 A I don't even know the vendor.

5 Q I see. So, you were violating the law technically; is
6 that right?

7 MR. ANDROPHY: Objection.

8 Q You were violating the law?

9 MR. ANDROPHY: Objection.

10 A I not violating. I work with somebody else.

11 THE COURT: I'll permit the answer.

12 THE WITNESS: What he say?

13 MR. MOULINOS: The Judge permitted the answer. So,
14 what did you say?

15 THE COURT: He answered.

16 THE WITNESS: I did not violate any law.

17 Q I also think, I think I also heard you testify previously
18 that you knew Mr. Kabir at least since 2007 and you felt he
19 was a friend to you. Did I understand that correct?

20 A Mr. Kabir tell you here he know me in 2009, so how you
21 know Mr. Kabir I know from 2007?

22 Q I'm asking you. I'm trying to get it straight.

23 A He said 2007, so how you tell me I know him 2007?

24 Q He testified 2009 is when he first met you? Is that
25 accurate, 2009 is when you met?

1 A He tell me, I don't know. He come in my customer, I have
2 a lot of customer, I don't have date for anybody. I know him
3 my customer, he's coming to buy fruit. Lot of people coming
4 buy fruit. I know lot of people. Not only Kabir.

5 Q How long did you continue selling fruits after you met
6 Mr. Kabir in 2009? Or thereabouts?

7 A 2009 to 2012.

8 Q And that was your full-time job?

9 A That is the one, my job.

10 Q Was this a profitable job?

11 A Anyway, better than nothing.

12 Q How much were you making, on an average, per week selling
13 fruits in the street?

14 A Depend how much can I sell.

15 Q Yeah, yeah, give me the depend.

16 A Can make 400, 350, 400, 500.

17 Q Let's go from the top to the bottom. So, it wasn't that
18 bad of a business. I mean, you were making 500 in some weeks,
19 right?

20 A Sometimes business good, people buy then.

21 Q And other times, people did not buy fruits?

22 A So, I might make less money.

23 Q What is the least you made? You said less, you made
24 less, so what is the average then?

25 A Three to five hundred.

1 Q Okay. My difficulty is why would you give up a three to
2 five hundred per week job to go work 16 hours a day for \$350 a
3 week, six days a week? I got difficulty here.

4 A Because winter coming. The winter very hard to stand
5 outside, so winter I'm not making every day money, so much
6 better working the inside store, so that's why I go there.

7 Q And you said that at some point Mr. Kabir begged you,
8 these are your words, he came to you begging you to work for
9 him in Hudson Cafe; is that correct?

10 A He's coming. He offer me, not me.

11 Q But the word you used is came to me begging me to work.
12 What did you mean by begging you to work at the Hudson Cafe
13 Pizza?

14 A What I say?

15 Q I believe you used the words begging you to work there.

16 MR. ANDROPHY: Objection, I don't recall him using
17 that word.

18 MR. MOULINOS: That's the word he used.

19 THE COURT: He did use that word.

20 MR. ANDROPHY: Okay.

21 Q What do you mean by he was begging you to work for him?

22 A I don't know, I don't say anything that kind of.

23 Q You didn't say that?

24 A No.

25 Q All right. Now, what qualifications did you have for

1 Mr. Kabir to be so insistent for you to go work for this pizza
2 place?

3 A Because he saw that my customer service, sir.

4 Q Your customers were what?

5 A He see how I treat the customer, how I good the customer.

6 Q Oh. So, you had a good presentation with customers?

7 A Right.

8 Q But you did not know how to do pizza, did you?

9 A I say I no make pizza. I work cash register and making
10 salad, making coffee and making ice-cream.

11 Q So, he hired you, in essence, to be the front
12 presentation for the restaurant, for the pizza place?

13 A They give me the front job, so I do. I work there.

14 Q Including cash register on top of it?

15 A Right.

16 Q So he trusted you?

17 A Because I trust him, that's why I give money for him.

18 Q I understand. By the way, was it Mr. Kabir that offered
19 you the job or something else?

20 A Mr. Kabir offer me.

21 Q Do you know if Mr. Kabir had any ownership interests or
22 any involvement with this business?

23 A How I know he always tell me, he said he has a business.
24 Never showed me any papers. Just talk with he.

25 Q Okay.

Proceedings

124

1 A I have three business, one candy store, one coffee shop,
2 one is pizza shop, so he always tell me this. So, I know he's
3 a big man, he's a big man.

4 Q I know. From August the 10th, 2012, until August the
5 last day at work --

6 MR. ANDROPHY: October.

7 THE COURT: It's October.

8 MR. ANDROPHY: Do you mean October?

9 MR. MOULINOS: Yeah, yeah, what did I say?

10 MR. ANDROPHY: You said August to August.

11 MR. MOULINOS: I apologize.

12 Q From the first day you worked there, presumably the 10th
13 of August, '12, to mid-October that you quit, how many times
14 did you see Mr. Kabir in the store?

15 A Lot of times.

16 Q How many is a lot? One, ten, fifty a hundred?

17 A I don't have it like a specific date. He coming lot, I
18 know. He's coming seven, eight, ten. I don't -- really, I
19 don't know. He coming lot of times.

20 Q A lot of times?

21 A Yes.

22 Q What did he do when he went in there?

23 A Because they have something to do downstairs office.

24 They always come, hi, hello, how are you, then they go

25 downstairs. I don't know what they do down the stairs. They

1 have office, personal office in downstairs.

2 Q Who is they?

3 A Owners. The all Paru. They coming the store, they talk
4 little bit, then they go, the owner going down the stair
5 office. They sitting there, they meeting there.

6 Q They meaning Mr. Paru, Mr. Kabir, others.

7 A All of them. All owner.

8 Q The owners?

9 A All owners.

10 Q How do you know who were the owners?

11 A Because I, up to today, I know that Kabir also own.
12 Today he's not part of that.

13 Q What does Mr. Kabir tell you to get you interested in
14 giving up the fruit business and go into working at this
15 place? You tell me what he said to you.

16 A He say why you the winter working the -- come work with
17 me. I need a good person like you, one person. You have
18 anybody, bring to me please, so whoever work for me, they
19 don't know how to run the business, they don't know how to
20 work, so please, come and work for me.

21 Q And your fruit experience was sufficient for Mr. Kabir to
22 invite you over and run the business?

23 A Because he knows I used to work in deli, too. So that's
24 why he tell me, so he know how to work in the deli.

25 Q So, before August the 10th, 2012, before that date, how

1 many times did you meet Mr. Kabir to discuss anything that
2 concerns this pizzeria?

3 A I no meet with him. He come to my fruit stand to buy
4 fruit, then he talk to me little bit for every single day for
5 his life, his business, doing this, that.

6 Q So, he was opening himself?

7 A He coming to me going to him. He come to me.

8 Q I see. At all times?

9 A I don't know where he live, where his house. He come to
10 on the subway, he saw I'm selling the fruits, he buy some
11 fruits, then he stood next to me, he talk to me.

12 Q Mr. Kabir is a rich man, you said? Lot of businesses?

13 A He say he has three business, so that's why. So, three
14 business means he's good, you know. I'm not really, I don't
15 know he rich or not rich.

16 Q I see. So, he would come to you and discuss prospects of
17 employment and business with you?

18 A No. He come to buy fruits. Then, he has a little
19 conversation about his life and this. He always talk to me
20 the good business, so tired, I'm making very good business
21 today, like this. He always tell me things.

22 Q And what time of the day, typically, you would see
23 Mr. Kabir?

24 A Like around after 6:30, between 6:00, 7:00.

25 Q Is that coming and going up the subway?

Proceedings

127

1 A Yeah, yes, subway, right.

2 Q Did you meet Mr. Kabir with Mr. Espinal at any time?
3 Ever?

4 A Ever?

5 Q Ever. Prior to getting to work there?

6 A No, Kabir coming to my fruit stand, he help me sometime.
7 Mr. Espinal sometime bring for my fruits. So, he saw sometime
8 the Kabir there.

9 Q I see. So, Espinal and you would see Mr. Kabir at the
10 fruit stand?

11 A He saw in Espinal in the fruit stand.

12 Q Did Mr. Kabir also invite Mr. Espinal to come work for
13 him?

14 A No, he tell me, you have any person good worker for me
15 who knows how to make pizza, so I need that person.

16 Q And you recommended Mr. Espinal?

17 A Because of my friend, he's a worker also pizza place long
18 time ago. So, I know he know how to make pizza.

19 Q And did you recommend Mr. Espinal to Mr. Kabir?

20 A I tell him, yes, I have one friend, he know how to make
21 pizza.

22 Q And that was sufficient for Mr. Kabir to hire Mr. Espinal
23 along with you?

24 A He say yeah, he say he going to hire us.

25 Q But you both started the same day, you and Mr. Espinal?

Proceedings

128

1 I see. So, the hours that you worked while you were there was
2 7:00 o'clock in the morning until 11:00 p.m., six days?

3 A Right.

4 Q Paid in cash? Was that remuneration for these hours paid
5 in cash?

6 A I don't understand.

7 Q Or check. Were any check given to you?

8 A Nothing check.

9 Q For the amount of hours that you worked there?

10 A No check for me. Only cash.

11 Q When you say counter work was part of your job
12 description, what do you mean by counter work? What is that?

13 A Counter work in the inside the deli. I work in the
14 making salad, coffee, sandwich.

15 Q So?

16 A Making soda, fountain soda in back. I have ice-cream, I
17 make ice-cream too.

18 Q How do you make ice-cream?

19 A There's a scoop ice-cream.

20 Q Oh, the scooping of ice cream?

21 A Yeah, very easy to make.

22 Q I see. After you quit working for this establishment in
23 October of 2012, what kind of work did you do?

24 A I food runner.

25 Q What is that?

1 A I deliver it, the food.

2 Q You deliver food. So, you became a delivery person?

3 A Yes.

4 Q Why didn't you go back to the fruit stand business in
5 another location, let's say?

6 A Because I don't get any more the permit, so how I can
7 work?

8 Q And how much did you earn in the beginning of this food
9 running business per week?

10 A I tell you business good, up to three to \$500 I make
11 week.

12 Q I see. And how many ours did you work when you started
13 doing the food run business?

14 A Four to like -- hour is like 12:00 is afternoon and
15 finish like 8:00 o'clock in the night, evening.

16 Q So, that was per hour, not for tips?

17 A This not for tips. This is my food selling the fruits.
18 So, people give the tips selling the fruits? I don't
19 understand.

20 Q I'm saying after you left the pizzeria that we're dealing
21 with, the Hudson Side Cafe pizza, you went into --

22 A Sorry, I work food delivery, not fruits. Not fruits.
23 Food.

24 Q Food delivery, that's what I said.

25 A You make me confused, the food and fruits.

1 Q Oh, I apologize. And what was the average weekly salary
2 doing food running?

3 A Because depend on the tips. So, my boss pay like
4 five-sixty-five the hour and I get the tips for customer. So,
5 around like, I making like, 12, \$15 hour.

6 Q And after October of 2012, did you have any opportunity
7 to see either Mr. Kabir or Mr. Espinal? Did you see them ever
8 again after quitting the pizzeria?

9 A No, after quit, I didn't have any chance to go there
10 because I working there full-time.

11 Q And by that time, you had received all the loan money you
12 had given to Mr. Kabir; correct?

13 A In between how long is there, he pay me already my money.

14 Q Is there any reason why he paid you back in cash as
15 opposed to check?

16 A Because he know better than me why he give me cash.

17 Q What do you think?

18 A I don't know. Because he make cash money, so maybe
19 that's why he give me cash money.

20 Q Did you ever have any nephew or somebody who we respect
21 and would call nephew that was in business with you prior to
22 the fruit business?

23 A Never, ever.

24 Q Did you have any business whatsoever with Mr. Espinal
25 prior to working for this establishment?

1 A Never.

2 Q Why would Mr. Espinal be at your fruit stand many times?

3 A Because he is my good friend and he drives around there,
4 so I need some transportation to sometime, I have to pay for
5 somebody, sometimes he help me. So, that's why he come to the
6 drop my fruits.

7 Q Why do you need transportation? He was in the
8 transportation business?

9 A My fruit is the warehouse, so I bring to my spot, so I
10 need the transportation to bring it. Sometime he help me to
11 bring that stuff to my spot to sell fruits.

12 Q Is it safe to say that you were friendly with
13 Mr. Espinal?

14 A Sometimes.

15 Q During this period of time?

16 A Sometime he help me. When I call, he's available, free,
17 he help me always.

18 Q So, you did have some business association?

19 A Not really.

20 Q I see?

21 MR. MOULINOS: No further questions, Judge.

22 THE WITNESS: Thank you.

23 THE COURT: No, wait one second.

24 Mr. Androphy, do you have redirect?

25 MR. ANDROPHY: I may have. If I may have a minute

Proceedings

132

1 or two?

2 THE COURT: All right.

3 MR. ANDROPHY: We have no redirect.

4 THE WITNESS: Thank you so much.

5 (Witness excused.)

6 MR. ANDROPHY: Your Honor, I think I may have
7 neglected to ask for admission of Plaintiff's Exhibit 7 while
8 the witness was up, but.

9 THE COURT: They are all admitted.

10 MR. ANDROPHY: Okay.

11 THE COURT: To the extent, as we discussed at the
12 beginning of these proceedings. I will consider them to the
13 extent that people mention them and point out to me their
14 relevance.

15 MR. ANDROPHY: Thank you, Your Honor.

16 If I could just have a three-minute bathroom break.

17 THE COURT: Okay. We'll take a short break.

18 (Recess taken.)

19

20 (Continued on following page.)

21

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25

Proceedings

133

1 (Whereupon, court resumed as follows:)

2 MR. MOULINOS: Judge, may I ask one little thing?

3 THE COURT: Sure.

4 MR. MOULINOS: I would request that you give me
5 leave, permission, to reopen the record for only one more
6 question. I noticed that the caption of the case and the W-2
7 form are two different names. I just want to clear it up for
8 the record.

9 THE COURT: Is this with respect to Mr. Oaxaca?

10 MR. MOULINOS: No. With the gentleman who just
11 testified.

12 THE COURT: Mr. Alam?

13 MR. MOULINOS: With Mr. -- known Halibul Islam and at
14 the same time Habibul Alam. The gentleman who just testified;
15 just to clear this thing up because now I'm confused.

16 MR. ANDROPHY: We admittedly have some typo's in the
17 caption if Mr. Alam needs to clarify that, I have no problem
18 with that.

19 MR. MOULINOS: No more than three questions, Judge.

20 THE COURT: Okay. Well --

21 MR. MOULINOS: Very briefly.

22 THE COURT: Certainly. Maybe we could just stipulate
23 to that, but you want to -- I'll permit it through
24 questioning. Why don't you -- Mr. Alam, could you please
25 come up, again?

Proceedings

134

1 MR. MOULINOS: Sir, what is your legal name?

2 A. Habibul Alam.

3 Q. And how did we become Halibul Islam as plaintiff in this
4 lawsuit?

5 A. Ask the guy in the middle, him. The guy come in, ask him.

6 Q. He is not your lawyer is he?

7 A. No. He -- my name when working there, I gave my name to
8 him.

9 Q. You mean to tell me the correct name, your correct name,
10 is Habibul Alam?

11 A. Right.

12 Q. In the W-2.

13 A. Yes.

14 Q. However, when the case was started, this very case that
15 you sued on, you're known as Habibul Islam.

16 A. Habibul Alam.

17 Q. How does an "Islam" become an "Alam"?

18 MR. ANDROPHY: May I state for the record, the
19 complaint says "Alam". That's the caption in the complaint.

20 THE COURT: I think there are few typos, not only
21 with respect to Mr. Alam's name, but also with respect to Mr.
22 Oaxaca's name.

23 BY MR. MOULINOS:

24 Q. Are you ever known as Habibul Islam?

25 A. No.

1 Q. Ever?

2 A. Never ever.

3 Q. You have always been Habibul Alam?

4 A. Yes.

5 Q. And your status in this country reflects that name?

6 MR. ANDROPHY: Objection.

7 BY MR. MOULINOS

8 Q. So the caption is incorrect, then?

9 MR. ANDROPHY: Your Honor, Mr. Moulinos is -- I
10 don't know what caption he's referring to. The complaint says
11 Habibul Alam. The answer and counterclaim I'll note, which is
12 plaintiffs' exhibit 2 filed by the defendants says Habibul
13 Islam. I don't know how counsel expects Mr. Alam to explain
14 how defense counsel used the incorrect name on the answer and
15 counterclaim, but the complaint filed document number one in
16 this case is correct. It's Mr. Alam, not Mr. Islam.

17 MR. MOULINOS: I apologize to the Court. That is
18 correct. It maybe must have been my incorrect naming of this
19 gentleman throughout. I see the complaint, and it does say
20 "Alam", so I apologize.

21 THE COURT: Yes.

22 MR. MOULINOS: Okay. My mistake.

23 THE COURT: I was trying to clear it up without
24 having to make Mr. Alam come back.

25 MR. MOULINOS: All right. I am known to make mistake

1 and apologize.

2 THE COURT: All right.

3 MR. ANDROPHY: Plaintiffs call Juan Espinal.

4 **J U A N E S P I N A L,**

5 called by The Plaintiff, having been first

6 duly sworn, was examined and testified

7 as follows:

8 THE DEPUTY CLERK: Please state your name for the
9 record.

10 THE WITNESS: My name is Juan Espinal.

11 THE DEPUTY CLERK: Could you spell that for the court
12 reporter, please?

13 THE WITNESS: J-U-A-N; last name: E-S-P-I-N-A-L.

14 DIRECT EXAMINATION BY MR. ANDROPHY:

15 Q. Good afternoon, Mr. Espinal.

16 A. Good afternoon.

17 Q. Did you ever work for a restaurant known as
18 Papo's Chicken?

19 A. Yes.

20 Q. And when did you begin working there?

21 A. That was the first week of August 2012; first, second
22 week.

23 Q. Immediately before going to work at Papo's Chicken, what
24 did you do for work?

25 A. Well, I didn't -- been working in the previous jobs, but

1 the very latest job that I used to do was driving, was
2 delivery person, basically.

3 Q. And who did you work for as a delivery person?

4 A. It's a bakery called "All Night --

5 Q. How did you find your job at Papo's Chicken?

6 A. I was referred by my friend, Alam. He told me that
7 someone was looking for -- to work in pizzeria.

8 Q. How did you know Mr. Alam?

9 A. Well, I know Mr. Alam for awhile ago, a long time ago. I
10 would say since 2000, 2001. We used to work for the same deli
11 back then.

12 Q. Were you ever business partners with Mr. Alam?

13 A. No.

14 Q. After Alam mentioned to you that Papo's Chicken was
15 looking for someone to work, what did you do next concerning
16 possibly working there?

17 A. Well, since I only used to work kind of part-time job as a
18 driving, I assume that this job will be probably much better
19 than what I was doing as a driver.

20 Q. Did you meet with anyone to discuss possibly working at
21 Papo's Chicken?

22 A. Yeah. I met -- well, it was the second week of June. I
23 met Alam and Mr. Kabir.

24 Q. Where did you meet them?

25 A. By the fruit stand on 40 Street located on Queens

1 Boulevard under the subway -- train line.

2 Q. And did anyone tell you about the Papo's Chicken business
3 at that time?

4 A. Well, he mentioned to me that they had some employees, and
5 the business going down because of miss -- care about their
6 employees. They were looking to hire someone to know or have
7 kind of a little bit of experience on the pizzeria field.

8 Q. Who told you that?

9 A. Mr. Kabir.

10 Q. Is that Mr. Kabir the gentleman who testified earlier
11 this morning?

12 A. The first person that testified. So far right now I know
13 his last name, but I always know as Shamin or Shahin. I'm
14 confusing with the --

15 Q. Okay. Did the you know Mr. Kabir from before?

16 A. No. I saw him couple of times buying fruits because I
17 used to be with Alam. Sometimes I spend a few hours with him.

18 Q. Okay. So at that meeting or that discussion at the fruit
19 stand, did Shahin say he wanted people to purchase the
20 restaurant?

21 A. No.

22 Q. Did he say he wanted people to run the restaurant and
23 receive profits?

24 A. No.

25 Q. What did he say about what he was looking for the business

1 for the restaurant?

2 A. He was looking for a good employees to care about his
3 business.

4 Q. Did he hire you at that -- in that discussion?

5 A. No. He told us that if we would like to go and see the --
6 where the store was located, he could after we close in the --
7 after Alam closed his fruit stand, he said if you guys want, I
8 could take you with my car, show you the place. I want you
9 two guys take a look how the place looks like.

10 Q. So did he do that, did he take you to the restaurant?

11 A. He did.

12 Q. And what happened then?

13 A. Well, he wait outside. He told Alam and myself to go
14 inside, order something, and he says you guys will see what
15 kind of employees I have, and that's what we did, we went to
16 --

17 Q. Okay. What happened next with regard to you possibly
18 working at the restaurant?

19 A. After that, we came back. He drop me at 40 Street same as
20 Alam, and he says we will -- I will let you know, think about
21 if you really wanted to work with me and let Alam know that so
22 he will get in touch with me.

23 Q. And did you get -- did he get in touch with you after
24 that?

25 A. Yeah. Probably, it was like enough -- the month of June;

1 June or starting July. He said that his business was shut
2 down -- well, that's what Alam told me the business was shut
3 down because of health department, and now he really needs
4 someone to work for the reopening.

5 Q. And then when did you next meet with Mr. Kabir?

6 A. At the working place.

7 Q. Was that when you began working?

8 A. Yes.

9 Q. Did you speak to him at all between the last discussion
10 you mentioned and beginning work.

11 A. Well yeah. I spoke to him I was asking him about my
12 salary. He mentioned that he would pay me \$400 a week.

13 Q. And just so we're clear who told you that?

14 A. He told me that, yes.

15 Q. "He" being "who"?

16 A. Mr. Kabir.

17 Q. Okay. All together how many times did you meet with Mr.
18 Kabir before you began working at Papo's Chicken, if you
19 recall?

20 A. It was only one time that I met him that, you know, I saw
21 him, but we barely have a conversation, like hi, how are you, _
22 and that's it. Only that was the first time when I saw him
23 and we went to the place. That was when we had the
24 conversation.

25 Q. Before beginning to work at Papo's Chicken, did you meet

1 with anyone else who was involved in the restaurant?

2 A. No.

3 Q. Did you ever have a meeting with, together with Mr. Alam,
4 with Mr. Kabir and Mr. Paru in the basement of Hudson Side
5 Cafe?

6 A. No.

7 Q. Did you ever have a meeting with them in a Burger King?

8 A. No.

9 Q. Did Mr. Kabir tell you that he was -- strike that. What
10 did Mr. Kabir tell you about who were the owners of Papo's
11 Chicken?

12 A. He said he was the owner. He run two more places in
13 Brooklyn. He has I believe three or four more partners,
14 including his brother.

15 Q. Did you meet any of those other partners before you
16 started working at Papo's Chicken?

17 A. No.

18 Q. Did you meet any of them when you began working at Papo's
19 Chicken?

20 A. Was Mr. Paru.

21 Q. When did you meet with Mr. Paru?

22 A. Was the same date, when I started working on there.

23 Q. And did you have any discussion with Mr. Paru?

24 A. No. He just asked me few questions about what do I know
25 in regards to the pizzeria.

1 A. And what were you paid while you worked at Papo's Chicken?

2 A. I used to pay \$400 cash; they used to pay me.

3 Q. And who paid you?

4 A. At the very beginning, it was Mr. Kabir for the first I
5 would say two, three weeks.

6 Q. What happened after those first two or three weeks?

7 A. After those three weeks, Paru used to pay me.

8 Q. Did the amount that you received ever change?

9 A. No. It was the same.

10 Q. Did you ever ask for a raise?

11 A. I mentioned to them few times. They told me that the
12 business was kind of slow, they will as soon as business
13 started picking up, they will raise my salary.

14 Q. Who did you have that conversation with?

15 A. Mr. Paru.

16 Q. Was that by telephone or in person?

17 A. Person.

18 Q. Did you -- strike that -- did you decide yourself how much
19 you would be paid?

20 A. No. They offered me -- they told me how much I am going
21 to get paid.

22 Q. Did you decide how much anyone else would get paid?

23 A. No.

24 Q. How often would Paru come, come and work at the
25 restaurant? I'm sorry. Come to the restaurant.

1 A. He used to come mostly every day for few hours.

2 Q. Approximately when during the day would he come?

3 A. Normally, he used to go there in the evenings like between
4 I would say five, six, seven, eight, stay two hours.

5 Q. And what would he do at the restaurant?

6 A. First thing that he used to come, he used to come and
7 speak to Alam and myself, asking for how was the sale, looking
8 for the money. Alam pass him the envelope that he used to
9 count from the sales, give it to him. He used come and eat,
10 try the pizza or the chicken, and then from there he used to
11 go to the basement.

12 Q. Do you know what he did in the basement?

13 A. No.

14 Q. Is there anything else you saw him do?

15 A. No. Sometimes he used to take orders over the phone.

16 Q. When you first started working at Papo's Chicken, who else
17 worked with you?

18 A. At the very beginning used to be two guys, two workers
19 from their country. The other guy that used to delivery, I
20 don't really remember his name, but the other one I know his
21 name was Shahin(Phonetic).

22 Q. And how long did they work at the restaurant after you
23 started?

24 A. They were there for two weeks.

25 Q. Did the restaurant hire anyone else when they left?

Proceedings

144

1 A. They hired Carlos Oaxaca.

2 Q. Do you recall when Mr. Oaxaca began working there?

3 A. I believe it was middle of August, probably the end August
4 somewhere.

5 Q. How did Mr. Oaxaca come to be hired?

6 A. Well, he was looking for a job, he was passing by. He
7 asked me if do I know if they are hiring or they need any
8 person to work. I told him I do not, you know, I don't know,
9 but if he wants to leave his information so when the owner
10 comes I could pass it to him, and he will decide whether we
11 need someone, they need someone or not.

12 Q. Then what happened next concerning Carlos Oaxaca working
13 for Papo's Chicken?

14 A. Well, Mr. Paru told me that after, it was like two days
15 after, he says, you can give him a call, this person that he
16 comes to looking for job, give him a call and tell him to come
17 and meet me the next day in the morning so I could discuss
18 with him, you know, the job and stuff look that.

19 Q. Okay. Did you then call Carlos?

20 A. I did call him, yes.

21 Q. And did he come to the restaurant?

22 A. Yes, he did.

23 Q. And what happened when he came to the restaurant?

24 A. When he came, I believe it was like, I don't remember,
25 somewhere around seven, eight, somewhere there in the morning,

1 and Mr. Paru was there. He came and he started talking, but
2 since he doesn't understand too much English, I was helping to
3 translate what Mr. Paru wants to tell him.

4 Q. Do you recall what Mr. Paru told -- have you translate to
5 tell Carlos Oaxaca?

6 A. For the best of more of my knowledge, whatever I
7 understood, I tried to translate to Carlos.

8 Q. Okay. Did you do anything in that discussion besides
9 translate between Carlos and Mr. Paru?

10 A. No.

11 Q. Did you make the decision to hire Carlos?

12 A. No.

13 Q. Did you decide how much Carlos would be paid?

14 A. No.

15 Q. Did you ever have authority to hire any employees?

16 A. No.

17 Q. Did you ever have authority to fire any employees?

18 A. No.

19 Q. Did you as part of your job supervise any other employees?

20 A. No.

21 Q. Did anyone supervise you?

22 A. No.

23 Q. What was Carlos Oaxaca hired to do at Papo's Chicken?

24 A. He was hired to basically prepare the food since Papo's
25 Fried Chicken is kind of a fast food, so he used to do the

1 fry, you know, make the French fries, chicken, cheeseburgers,
2 and stuff like that, and washing dishes.

3 Q. What did Mr. Alam do at the restaurant?

4 A. He used to be cashier taking the money from every customer
5 comes to purchase, making ice cream, salad.

6 Q. And what did you do?

7 A. I used to make the pizza, serve the pizza, and sometimes
8 take orders over the phone, and when the deliveries used to
9 come if I'm not busy at the pizzeria, I used to bring the
10 products to the basement.

11 Q. Other than your salary, did you receive any pay from the
12 owners of Hudson Side Cafe?

13 A. No.

14 Q. Did you take any of the profits of Hudson Side Cafe?

15 A. No.

16 Q. Did you ever make any agreement with the owners of Hudson
17 Side Cafe that you would run the business and keep the
18 profits?

19 A. No.

20 Q. Do you know what happened to the money that Hudson Side
21 Cafe would receive from sales?

22 A. Honestly, I never asked them what they do with their money
23 because it is their money.

24 Q. Did you keep that money?

25 A. No.

1 Q. Did you ever see who kept that money?

2 A. Well, Mr. Paru used to come and pick the money, grab the
3 money and go, but, honestly, I don't know, whether he's taking
4 home or he put it in the basement.

5 Q. I am going to show you a document that's marked by the
6 defendants as Exhibit G. Do you recognize that document?

7 A. Yes.

8 Q. What is it?

9 A. Time Warner, I would say a bill, a contract.

10 Q. And is your name on that document?

11 A. Yes.

12 Q. Why is your name on the document?

13 A. Okay. This people, they used to call and calling,
14 basically, and giving us -- every time they call, they are
15 looking for the owner or the manager, and every time they used
16 to call, if the owner is not here, the manager is not here.
17 So when Mr. Paru used to come, I used to tell him this is
18 Time Warner Cable called -- just give him notes that on the
19 calls. Sometimes they are looking for him, and I mentioned to
20 him that Time Warner Cable called and they asking -- basically
21 offering a package, that he could save money.

22 So he told me, you know what, next time when they call if
23 you want, you can just tell them to send you, fax you over an
24 agreement and you can sign and tell them to give it because
25 I'm too busy running my two business.

1 Q. So did you sign those papers?

2 A. I did.

3 Q. And did you -- you did make that decision to do that on
4 your own?

5 A. No. I call him and I told him, I explained to him
6 everything, even I show him the page, and I told him to fill
7 it out, he just put it on the side. He told me, you know
8 what, just leave it like that. Next thing they call up again,
9 I told him, listen, people they are calling up. He said, if
10 you have time just fill it out and fax it over to them. You
11 can put your name and sign, it's not going to be a problem.

12 THE COURT: Who's the "him" you are talking about?

13 THE WITNESS: I'm sorry?

14 THE COURT: Who did you call?

15 THE WITNESS: Mr. Paru.

16 THE COURT: Okay.

17 BY MR. ANDROPHY:

18 Q. Did you write the title president on those papers?

19 A. Just because the person that they offering this package,
20 it has to be someone that is authorized to do this. So when I
21 call Mr. Paru, I said they are asking to put some title in
22 there. He said you can just put president and just sign and
23 fax it to them.

24 Q. Were you in fact the president of Hudson Side Cafe, Inc.?

25 A. No. I have no legal papers with Hudson Side Cafe.

1 Q. Do you have any title of an officer of Hudson Side Cafe,
2 Inc.?

3 A. No.

4 Q. Were you a shareholder of Hudson Side Cafe Inc.?

5 A. No.

6 Q. Did you ever sign checks for Hudson Side Cafe Inc.?

7 A. I did quite a few times early on.

8 Q. And did you decide to do that on your own?

9 A. No. Everything was approved by Mr. Paru.

10 Q. Why did you sign checks for Hudson Side Cafe?

11 A. Because deliveries used to come, there was no cash money,
12 so the delivery mans, they used to say, let us know -- it used
13 to be a COD, if it's not cash or checks on the time the
14 delivery arrives, we will leave.

15 So at that time I called Mr. Paru, and I said, sir, you
16 know, the delivery is here, we need the stuff to continue
17 selling, but you don't leave anything here. He was like the
18 checkbook is under the counter, you know, you can just give
19 him a check and it's fine. It is fine with me as long as you
20 just keep the invoice and show to me.

21 Q. Did you ever go or speak to the bank that Hudson Side Cafe
22 used to get permission to be someone who can sign for the bank
23 account?

24 A. No.

25 Q. Did you ever fill out any forms so that you would be

1 someone who could sign on behalf of Hudson Side Cafe, Inc.?

2 A. No.

3 Q. Did anyone at Papo's Chicken ever give you a document
4 stating how much you would be paid?

5 A. No.

6 Q. Did anyone ever ask you to sign any documents in order to
7 work for Papo's Chicken?

8 A. No.

9 Q. When you were paid, did you receive any statement of what
10 you were being paid?

11 A. No. Everything was cash.

12 Q. Did you ever see any posters about the minimum wage In
13 Papo's Chicken?

14 A. They never have no papers on the wall, there was nothing,
15 no records or nothing in there.

16 Q. I'm giving you a document that's been marked as
17 Plaintiffs' Exhibit 7. Do you recognize the second page or
18 for those who have just one page the reverse side of the
19 document.

20 A. Yes. It's a W-2.

21 Q. And who provided that to you?

22 A. Was one of his partners, I think his name is Mohammed or I
23 don't really know his name because I saw him a few times.

24 Q. When did you stop working at Papo's Chicken?

25 A. It was probably the first week of February 2013.

1 Q. Why did you stop working?

2 A. The reason why is because I never see any increase on my
3 salary.

4 Q. When you stopped working, was Mr. Alam still at the
5 restaurant?

6 A. No. He left like probably second week or middle of
7 October.

8 Q. Was Carlos Oaxaca still at the restaurant?

9 A. Yes, he was there.

10 Q. After you stopped working at Papo's Chicken, what did you
11 do for work, if anything?

12 A. I went back to my previous job that I used to do, the
13 delivery, driving, you know, kind of delivery person.

14 Q. Is that for the bakery?

15 A. That's for the bakery, yes.

16 Q. Were you a manager of that business?

17 A. Right now I'm -- I have like authority to kind of manage
18 driving people, where they working right now at the place.

19 Q. How long have you had that authority?

20 A. Probably like seven, eight months ago, since I am very
21 hard working person and I always offer the best of myself, so
22 the owner decide to give me a little chance to manage, you
23 know, kind of drivers.

24 Q. Did you ever have that type of authority when you worked
25 there before working at Papo's Chicken?

1 A. No.

2 Q. Did you ever manage any business?

3 A. No.

4 Q. Have you ever owned any business?

5 A. I had a partnership, which was a bread distribution back
6 in 2004.

7 MR. ANDROPHY: Okay. No further questions.

8 CROSS-EXAMINATION

9 BY MR. MOULINOS:

10 Q. Good afternoon, Mr. Espinal.

11 A. Good afternoon, sir.

12 Q. When you started to work at this pizza place, I think you
13 mentioned there were two others who worked there for about two
14 weeks.

15 A. Yes.

16 Q. Do you know who fired them?

17 A. May I have some water, please?

18 Q. Of course.

19 A. Thank you. I'm ready.

20 Q. These two people that you found there who were fired two
21 weeks later, do you have any idea who fired then?

22 A. Nope.

23 Q. Could it be that you fired them?

24 A. What you mean?

25 Q. I don't know. I'm asking you.

1 A. Oh.

2 Q. Did you fire these two people who were there two weeks
3 after you started to work?

4 A. No, sir.

5 MR. ANDROPHY: Objection. There's been no testimony
6 that they were fired.

7 THE COURT: It's sustained.

8 BY MR. MOULINOS:

9 Q. Do you know why these other two people who were there
10 before you got there ceased to work further for this pizzeria?

11 A. Excuse me?

12 Q. Do you know why they were no more working there after two
13 weeks of you being there?

14 A. Those two people, they were the two persons when at the
15 beginning of the two week, the second week of June, we went
16 with Mr. Kabir to look at the place. Those two workers,
17 those are the workers that used to work there making salads
18 without gloves. So probably I think that was the reason they
19 got fired from the owner.

20 Q. Not by you?

21 A. Not by me, sir.

22 Q. Isn't it a fact that these two were Bangladeshis, and you
23 wanted to bring in a Hispanic to work so you fired them and
24 you bring in Mr. Carlos; isn't that the truth?

25 A. No, sir. That is not the truth.

1 Q. We'll find out. Now, you mentioned before about a
2 contract involving Time Warner Cable in Defendant's Exhibit G;
3 do you remember testifying about that?

4 A. Yes.

5 Q. What was the company that was used before to provide cable
6 service to this establishment; do you recall?

7 A. I believe it was Verizon.

8 Q. It is not that you believe, you know for sure it was
9 Verizon; isn't that a fact?

10 MR. ANDROPHY: Objection. Argumentative.

11 THE COURT: I'll permit that question.

12 MR. MOULINOS: And you were not happy with Verizon --

13 THE COURT: He did not answer that.

14 MR. MOULINOS: I'm sorry.

15 THE COURT: Would you ask it again?

16 BY MR. MOULINOS:

17 Q. Okay. Wasn't the company Verizon, and you are sure of
18 that?

19 A. It was Verizon.

20 Q. Okay. And wasn't it a fact that you were not happy with
21 Verizon, and you wanted to switch to a more fancy operation
22 for the store?

23 A. Why I should not be happy if it's not my store.

24 Q. Okay. Let's go back to the cable contract. You signed
25 it, didn't you?

1 A. I did.

2 Q. And you said at the bottom you were the president?

3 A. Yes, I did.

4 Q. You signed not in one spot, several spots.

5 A. Yes. And now I understand why Mr. Paru told me that it's
6 fine with me to sign and put the president because I know from
7 fact that probably in the future that would be something
8 against me, you know.

9 Q. And you had no authority to be the boss there for nothing;
10 am I correct?

11 A. You are correct.

12 Q. Paru was directing everything?

13 A. Yes, sir.

14 Q. Every day of the week?

15 A. Basically, everyday he used to come.

16 Q. Well, Mr. Carlos Oaxaca said he was there definitely
17 seven days a week. Was Mr. Oaxaca wrong?

18 A. Well, I used to work --

19 MR. ANDROPHY: Objection. Mr. Moulinos is
20 testifying here. He can't speak for what Mr. Oaxaca --

21 THE COURT: Ask questions, please.

22 BY MR. MOULINOS:

23 Q. You signed this document as the president?

24 A. I did.

25 Q. And the date is September 7, 2012?

1 A. Correct.

2 Q. Isn't this roughly one month after you commenced being
3 there?

4 A. Yes.

5 Q. And the service that you ordered could have put into a lot
6 of debt the corporation; is that correct? You increased the
7 service, you increased the obligation of Hudson's Cafe,
8 correct?

9 A. Well, yeah, but that was under Mr. Paru approval.

10 Q. If Mr. Paru was there almost on a daily basis, why would
11 you need to call him and tell him, hey, why don't we upgrade
12 the cable service, the guy is here, why don't you let me sign,
13 or let me sign, or, yeah, just sign as the president. Why
14 didn't you have some patience and let Mr. Paru sign the
15 document; was there a reason?

16 A. There was a reason because the company used to call like
17 almost everyday and I hand -- I show him the papers, I give
18 him the papers several times. He told me, yeah, I will review
19 it, and I will sign and you can fax it over.

20 So after several calls I said, listen, these people are
21 driving me crazy, they've been calling everyday. So you
22 already read the contract, what are you going to do? Should I
23 just get rid of this or what are you going to do? He said,
24 you can just sign, you know, sign and fax them over.

25 Q. And he told you this over the telephone?

1 A. Over the phone.

2 Q. Well, wasn't that morning or that afternoon there before
3 you took the initiative to sign as the president?

4 A. I believe it was in the morning.

5 Q. Okay. If you were there in the morning, why couldn't you
6 wait 'til next morning to see Mr. Paru so he can sign this
7 thing?

8 A. He had -- at that point I don't really think about I'm
9 going to get into all this situation. If I knew I am going to
10 get into all this troubles, trust me, I would never sign
11 anything that does not belong to my name.

12 Q. This was a mistake on your part?

13 A. I would say, yes. I made a big mistake that I would never
14 make it again.

15 Q. I understand. And you made that mistake because you
16 trusted Mr. Paru that he meant what he said?

17 A. That's right.

18 Q. And if you knew Mr. Paru as you know him now, you
19 wouldn't be signing this, correct?

20 A. Correct.

21 Q. Okay. By the way after you signed this document, did
22 Warner Cable provide service to the establishment?

23 A. Yes.

24 Q. What service did you get?

25 A. It was phone, cable, --

1 Q. Internet?

2 A. -- and Internet called "Triple Play".

3 Q. You thought that was a better plan than the Verizon that
4 used to be there before?

5 A. Well, because according to Mr. Paru when I show him the
6 contract, he told me this is a better deal, and I will fill
7 out the paperwork and I will do it later on.

8 Q. So that's why you -- based upon the orders of Mr. Paru,
9 you went ahead, you became the president, and you executed
10 this document several times, correct?

11 A. Yes. And it was a big mistake.

12 Q. I understand. Now, if I may show you Defendants Exhibit
13 A; do you see Defendants Exhibit A, Mr. Espinal?

14 A. Yes, sir.

15 Q. Have you seen this document before?

16 A. Yes, I did.

17 Q. And on the upper right-hand corner, is that your
18 signature?

19 A. That's correct.

20 Q. And would you explain to the Court what is this document
21 that has your signature on it and a lot of inventory on it?

22 A. This was an inventory like you just say.

23 Q. It was an inventory. Why was this necessary with your
24 signature on it?

25 A. Okay. Well, basically, three person, we went to the

1 basement because the place was shut down by the Health
2 Department. When they reopen was Mr. Shahin, the other guy
3 who used to work over there, and myself, we went to the
4 basement. He said since you guys are going to work together,
5 I want you two guys to go downstairs before we open, and I
6 want you two guys check that everything that is on the
7 inventory, I want it to have a track of what is in there, and
8 I want you two guys to check item by item.

9 Q. I thought before you testified that you never went
10 downstairs with Mr. Alam, Mr. Paru, and Mr. Kabir? Now, it
11 is there was a meeting; you admit that?

12 A. It was not a meeting, sir. It was a check of the
13 inventory that was in the basement, and there was not a
14 meeting because there was a co-worker that used to be there.

15 Q. How long did it take to draft this Exhibit A which is the
16 inventory sheets?

17 MR. ANDROPHY: Objection. There hasn't been any
18 testimony that he drafted this.

19 MR. MOULINOS: I said draft to -- I didn't say he
20 drafted it. I said to draft the agreement.

21 MR. ANDROPHY: Okay. Withdrawn.

22 MR. MOULINOS: To put it, reduce it into writing.

23 THE COURT: Do you know how long it took to write-up
24 this inventory?

25 THE WITNESS: Well, I didn't write this inventory.

1 Everything was written, we just went downstairs and checked
2 the quantity and put the check mark in.

3 BY MR. MOULINOS:

4 Q. And there are some prices per unit there and then to the
5 right in different colors, as well, to the right of it there
6 is the summation, right? Per item?

7 A. That's correct.

8 Q. And you go all the way to the end, six pages later, and
9 there is a writing at the very last page that says \$6,019; see
10 that?

11 A. Yes.

12 Q. What does that mean, the 6,019?

13 A. Most probably was -- most probably was the amount of the
14 inventory, but the prices, when we went downstairs and checked
15 the inventory about quantities of each product or each item,
16 prices was not, that was not there.

17 Q. Since you were an employee, per your testimony, why would
18 you want to be signing an inventory list in such detailed
19 fashion?

20 A. See, what happened is we went downstairs, the guy says,
21 you know what, we just got to make sure that everything was
22 there. And since I was a kind of new person in there, they
23 told me, like, you know, well, you could just sign and it's
24 fine.

25 Q. Oh, so who told you just to sign?

1 A. Mr. Shahin.

2 Q. "Shahin" meaning "Mr. Kabir"?

3 A. No. Shahin, the guy who works over there.

4 Q. Okay. Who else was present?

5 A. The other guy who used to make deliveries.

6 Q. How about Mr. Paru?

7 A. Mr. Paru wasn't there.

8 Q. I see. So you sign a very detailed inventory list with
9 somebody you don't even know who supposedly was just working
10 there and some delivery guy? Did I hear you right?

11 A. Yes. And if you see the first page, it's not the end of
12 the page. It's not the last page, it's the first page that I
13 signed.

14 Q. Yeah. But it says one through six.

15 A. Yes.

16 Q. Okay. So, therefore, there were six pages.

17 A. All right.

18 Q. Now, beneath 6,019, there is two more scribbling's.

19 A. Okay.

20 Q. One says \$3,000 and underneath it says chicken, 1,100; can
21 you please explain to us what these two mean?

22 A. I have no idea about the chicken, three thousand, and
23 eleven -- or 1,100. It was not -- like I mentioned to you,
24 numbers was not there.

25 Q. Oh, these numbers came later?

1 A. Yes.

2 Q. Isn't it a fact that you were given a -- that you paid
3 \$3,000 to Mr. Paru and because you purchased chicken for
4 \$1,100, that also was given a credit to you, and that would be
5 reflected in other documents that are coming up? Isn't that
6 the real truth?

7 A. Do I pay \$3,000 to him?

8 Q. Yes.

9 A. Not true.

10 Q. Okay. However, this is an inventory sheet that was
11 accurate at the time it was made; is that correct?

12 A. Just the number of the cases, not the prices.

13 Q. Oh, not the prices?

14 A. Explain that to you.

15 Q. Oh, but this is your signature at the very top right?

16 A. That's correct.

17 Q. If I may turn your attention to Defendant's Exhibit B; do
18 you recognize the document?

19 A. Yes.

20 Q. Is on the very upper right-hand corner your signature?

21 A. That's correct.

22 Q. Isn't this a further list of inventory that is from the
23 first floor of the business?

24 A. To be honest, I don't remember if it was from the first
25 floor or was from the basement.

1 Q. But at the time it was made, was it accurate?

2 A. There was no prices in there.

3 Q. I see. The prices came later?

4 A. That's correct, sir.

5 Q. I see. But the upper right-hand corner is your signature,
6 isn't it?

7 A. Yes.

8 Q. And do you recall signing this document?

9 A. I did.

10 Q. So it was perfectly fine except for the item unit prices?

11 A. That is correct.

12 Q. May I direct your attention, sir, to Defendant's Exhibit
13 C?

14 A. I don't have any -- which was -- it's here or --

15 Q. It's the first bank statement.

16 A. I don't have it.

17 Q. I give you the entire package there.

18 MR. MOULINOS: May I approach, Your Honor? You found
19 it?

20 THE WITNESS: Yes.

21 THE COURT: Is it marked or -- it's not marked.

22 MR. MOULINOS: It is marked through before it. It is
23 the exact same document that was marked at the depositions.
24 They all have the identical marking.

25 THE COURT: No. The Defendant's Exhibit C here?

1 MR. MOULINOS: Yes. Because this was placed --

2 THE COURT: This copy doesn't have that marked.

3 MR. ANDROPHY: I think the copy he has, if it's the
4 same as mine, I think it might be marked on like the seventh
5 page of the document?

6 MR. MOULINOS: Yes. Counsel is correct, Your Honor.

7 THE COURT: Okay. I'll look at the document.

8 MR. ANDROPHY: The sixth or seventh page.

9 THE COURT: Could you go and help him, please, find
10 the markings?

11 MR. MOULINOS: Yeah. I gave him my copy.

12 THE WITNESS: Is it Defendant D?

13 MR. MOULINOS: No. Defendant's C, that one.

14 THE WITNESS: Okay.

15 MR. MOULINOS: Does it say "C" at the bottom?

16 THE WITNESS: Yes.

17 BY MR. MOULINOS:

18 Q. You see this bank statement?

19 A. I see it.

20 Q. Who's the owner of this bank account?

21 A. Hudson Side Cafe.

22 Q. Incorporated?

23 A. That's correct.

24 Q. Were you ever a shareholder in that corporation?

25 A. No, sir.

1 Q. A partner?

2 A. No.

3 Q. A signatory on it?

4 A. No.

5 Q. Why don't we turn our attention, sir, further down where
6 the checks begin?

7 A. Okay.

8 MR. ANDROPHY: If I could ask that counsel go back to
9 the table rather than approaching the witness unless there's
10 something that needs to be pointed out.

11 MR. MOULINOS: Fair enough, Judge. I just wanted to
12 be close to him if he --

13 THE COURT: Right.

14 MR. MOULINOS: -- is not on top of things. That's
15 all. I apologize.

16 BY MR. MOULINOS:

17 Q. Let's look at the page where the actual Defendant's C
18 sticker is.

19 A. Okay.

20 Q. Do you see it?

21 A. I do.

22 Q. There are checks there, right?

23 A. What checks?

24 Q. Check number 1614; see it?

25 A. Yes.

1 Q. Dated what? What's the date on that check?

2 A. 9/14/2012.

3 Q. 2012, right? Payable to who?

4 A. It says "AB Waste".

5 Q. Would that be the sanitation company?

6 A. Probably. Because I didn't fill out that check.

7 Q. Well, who signed it?

8 A. I did.

9 Q. Why did you sign it since you were never authorized to
10 sign anything?

11 A. Like I mentioned to you earlier, every time when I --
12 these people used to come, I used to call Mr. Paru. He was
13 like, checkbook is under the cash register, you or Alam sign
14 the check, and just give it to the vendor.

15 Q. You did not realize you were committing forgery of some
16 sort?

17 A. Honestly, no.

18 MR. ANDROPHY: Objection.

19 THE COURT: Okay.

20 MR. MOULINOS: Okay, Judge. Withdrawn.

21 THE COURT: Just control yourself, Mr. Moulinos.

22 BY MR. MOULINOS:

23 Q. But you did sign the check?

24 A. I did.

25 Q. Because you called Mr. Paru, and he authorized you to

1 sign your name on the check?

2 A. That's correct.

3 Q. Let's move to the next check, sir; do you see it?

4 A. I did.

5 Q. What's the number?

6 A. I would say 16-16, probably.

7 Q. And it's payable to whom?

8 A. State Farm.

9 Q. That is an insurance company, right?

10 A. That's right.

11 Q. And the amount is 747, correct?

12 A. That's correct.

13 Q. Did you sign it?

14 A. I did.

15 Q. Why did you sign an insurance company check?

16 A. Like I mentioned to you.

17 Q. What is it? I'm talking about this check, specifically.

18 A. The people come, the people looking for checks. I've been
19 calling Mr. Paru; Mr. Paru says, you know what, give them a
20 check, you know what to do. I already told you I'm very busy
21 with my business and just sign the check and give it to them.
22 And all these checks were signed and they were made to,
23 basically, pay expenses for their business. Nothing is for my
24 personal or Alam or anybody else.

25 Q. I think you were very impatient, and that's why you called

1 Mr. Paru because these people were haunting you day-after-day
2 for payment, so you would call up Mr. Paru and say, hey, can I
3 --

4 MR. ANDROPHY: Objection.

5 MR. MOULINOS: I'm trying to find out what happened.

6 MR. ANDROPHY: Mr. Moulinos is being --

7 THE COURT: Mr. Moulinos, ask questions. Please
8 don't make speeches.

9 MR. MOULINOS: Okay.

10 BY MR. MOULINOS:

11 Q. Was it your frustration that made you phone call Mr. Paru
12 to get authorization to sign this?

13 A. No.

14 Q. You were not frustrated?

15 A. No.

16 Q. You just said these people were haunting you daily and
17 daily out --

18 MR. ANDROPHY: Objection. That's mischaracterization
19 -- I think that was Mr. Moulinos' additions.

20 MR. MOULINOS: Withdrawn, Your Honor. Withdrawn.
21 Withdrawn.

22 BY MR. MOULINOS:

23 Q. However, it is a fact you signed the insurance company
24 premium check for \$447 on September 22, 2012; yes or no?

25 A. You said 400?

1 Q. And 47.

2 A. Which check?

3 Q. Number 1616?

4 A. That's 747, sir.

5 Q. Dollars?

6 A. Yes. Not 400.

7 THE COURT: Seven-forty-seven.

8 BY MR. ANDROPHY:

9 Q. Seven-hundred-and-forty-seven?

10 A. That's correct.

11 Q. And the check number is 1616?

12 A. Uh-huh.

13 Q. And you signed it?

14 A. Yes.

15 Q. Payable to State Farm?

16 A. That's correct.

17 Q. May we move further into the next exhibit, sir, that would
18 make it "D", another group of -- actually, there's one more
19 bank statement, Defendant's Exhibit D: Do you see that?

20 A. Yes.

21 Q. Okay. Now, what company's bank statement is that?

22 A. Hudson Side Cafe, Inc.

23 Q. And as we said, you were not authorized to sign anything
24 for that corporation, right?

25 A. That's correct, sir.

1 Q. And this statement is from September 29th, 2012 to October
2 31, 2012?

3 A. That's correct.

4 Q. And let's look now at the page where the bank checks
5 begin. Do you see that page?

6 A. Yes.

7 Q. Do we see the first check at the bottom left, number 1618?

8 A. Yes.

9 Q. You see that?

10 A. Uh-huh.

11 Q. Did you sign that check?

12 A. I did.

13 Q. And to whom was it payable?

14 A. Supreme Poultry, Inc.

15 Q. Do you know who they were?

16 A. Chicken company.

17 Q. Okay. And the business of Papo's Chicken was to sell
18 chicken, right?

19 A. That's correct.

20 Q. So you needed a lot of inventory chicken, correct?

21 A. Well, they used to sell it.

22 Q. Sell what?

23 A. So they need product.

24 Q. Okay. Who's "they"?

25 A. The business.

1 Q. Okay. Did you sign this check?

2 A. I did.

3 Q. And how did it come about that you signed this very
4 specific check on October 1st, 2012?

5 A. I guess I'm going to have to give you the same answers on
6 all these checks.

7 Q. Let's hear it. Let's hear it.

8 A. The same answer is the same. I called Mr. Paru --

9 Q. I'm talking about this specific check.

10 A. Yes. I called Mr. Paru, and I told him there is no cash.
11 There is not enough cash, what do you want us to do; you want
12 the guys to leave with the product? We're not going to have
13 chicken to sell or how you going to pay them. Same. He keeps
14 saying, I don't -- he keeps saying this: I don't understand
15 how many times I'm going to explain to you, whenever someone
16 comes, just get the checkbook in there, and give them a check
17 like always you do, give them a check, and get the product.

18 Q. The same answer goes also for the State Farm check;
19 somebody came in and demanded it on the spot, correct?

20 A. Yes.

21 Q. Let's move to check 1617 on the same page.

22 A. Okay.

23 Q. Do you see it?

24 A. Yes.

25 Q. Is the date on it September 27th, 2012?

1 A. That's correct.

2 Q. Did you sign the check?

3 A. I did.

4 Q. And the name of the company is what?

5 A. Same. Supreme Company. The chicken company.

6 Q. I see. And underneath that I see another check, number
7 1625, also payable to Supreme?

8 A. That's correct.

9 Q. Dated October 5th, 2012?

10 A. That's correct.

11 Q. For \$372?

12 A. Yes.

13 Q. Did you sign it?

14 A. I did.

15 Q. Also, let's move to the next page. Staying on the first
16 column on the left side of the page; do you see check number
17 1630?

18 A. Yes.

19 Q. Did you sign the check?

20 A. Yes, sir.

21 Q. On October 12th, 2012?

22 A. That is correct.

23 Q. To whom is it made payable?

24 A. Called "AC Metro Distribution"; must be a soda company.
25 Or juice company.

1 Q. And what do they sell?

2 A. Juice.

3 Q. What do they sell? What do they provide?

4 A. Juice.

5 Q. Juice? Oh, all right. Let's go to one check underneath
6 that; 1632 is the number of the check.

7 A. I see it.

8 Q. What is the date on it?

9 A. October 20th, 2012.

10 Q. Payable to whom?

11 A. "AB Waste System"; must be a probably a garbage company.

12 Q. And did you sign it?

13 A. I did.

14 Q. Why did you sign this check? This particular check.

15 A. The guy used to come once -- I believe once a week or once
16 a month. I can barely remember. Looks like was once a week
17 or a month, used to come in looking for his check. Sometimes
18 he had the check made, sometimes he doesn't. Sometimes we
19 used to give him cash if the cash was available. So Mr. Paru
20 never wants us to pay cash. He always says, you know, pay
21 them in check.

22 Q. And Mr. Paru, is this again over the telephone you asked
23 Mr. Paru what to do with this, and what did he say to you?

24 A. Yes. He just keep saying the same thing. He says, the
25 check is there. Just you or Alam, whoever is available, just

1 sign.

2 Q. So every time that these checks were made by you or rather
3 signed by you, the method of signing the checks was the same.
4 You would call Mr. Paru; Mr. Paru would authorize you to go
5 ahead and sign as though you are an authorized member of the
6 corporation without exception; is that correct?

7 A. That's correct.

8 Q. Let's go underneath. You see check number 1634?

9 A. Yes.

10 Q. Dated what?

11 A. October 16, 2012.

12 Q. Also payable to Supreme. I presume --

13 A. Chicken company.

14 Q. I presume that is the chicken company.

15 A. That's correct.

16 Q. Did you sign the check?

17 A. I did.

18 Q. Okay. So I'm going to assume the answer is the same. You
19 called Mr. Paru, Paru came back and said, oh, yeah, it's
20 underneath the desk, go ahead and sign it?

21 A. That's correct.

22 Q. Okay. Let's move to the right side. We got some more
23 checks you signed, didn't you?

24 A. Basically --

25 Q. Right now.

1 A. Basically, it's everything is for the business purpose,
2 for that store.

3 Q. If you knew that the chicken guy is going to show up once
4 a week and Mr. Paru was there everyday or almost everyday,
5 why didn't you tell Mr. Paru, why don't you just pre-sign
6 these checks, have them ready so when Mr. Chicken comes
7 around, the checks are ready to give him?

8 A. I never thought about -- at that time, I never thought
9 that this, to sign this check is going to cause me all these
10 troubles, all these issues.

11 Q. What trouble did these checks cause you, sir?

12 A. Well, so far you've been asking me so many questions about
13 these checks. If I knew at the very beginning that I'm going
14 to get in -- in some problems like this, I would never have
15 signed any checks, like I mentioned earlier, that does not
16 belong or is not under my name.

17 Q. So what you're saying, all this trouble that these checks
18 are causing, you mean your credibility today because nothing
19 else happened before today, correct?

20 MR. ANDROPHY: Objection.

21 THE COURT: Sustained. Move on.

22 BY MR. MOULINOS:

23 Q. All right. Let's go to the next page. Mr. Espinal,
24 there are three more checks on the page that follows, correct?

25 A. That's correct.

1 Q. And I assume again it was the same issue with the Supreme
2 Chicken provisions company that you signed three more checks;
3 one number is 1636; the other is 1638; and the other is 1637.
4 All payable to Supreme, presumably, the chicken provisions
5 company, correct?

6 A. That's correct.

7 Q. And, again, the testimony is identical to the one before?

8 A. That's right, sir.

9 Q. Okay. May we move, sir, to exhibit further down, it's
10 H-1, which happens to be a slip of deposit of cash for \$500.
11 It's H-1; do you see it?

12 A. H-1; yes.

13 Q. Do you remember making a deposit for \$500 in the bank?

14 A. Yes.

15 Q. What was that for?

16 A. Mr. Paru called me. He said since we been sending a lot
17 of checks, we, because I'm the ones, you know, signing the
18 checks, he says I want you to make this cash deposit because I
19 don't want the checks to be bounced, and that's what I did.

20 Q. So you complied with Mr. Paru's request --

21 A. Yes.

22 Q. -- to go fast to the bank, make a \$500 deposit, so all the
23 checks don't bounce?

24 A. That's correct.

25 Q. Mr. Paru told you to do that?

1 A. That's correct.

2 Q. And you went yourself to the bank?

3 A. That's correct.

4 Q. Let's look at the next page, the next exhibit, H-2.

5 A. Okay.

6 Q. Do you see that? H-2?

7 A. Yes. Uh-huh.

8 Q. Could you tell us what that is that says paid in full?

9 A. This is the money that Mr. Paru sometimes used to take
10 it.

11 Q. Take it from whom?

12 A. From the register.

13 Q. And at the upper left-hand corner, it says Juan
14 Anala(Phonetic)?

15 A. Yes.

16 Q. Why would your name be there if you did not handle cash?

17 A. Because we are the ones sometimes used -- Alam used to be
18 their cash register.

19 Q. Right.

20 A. And I used to run, also, take the money when the customers
21 used to come. So we the ones, we're responsible if any money
22 is missing on the register. So that way every time he used to
23 come and grab money, we used to write it down.

24 Q. And further down the page, why is there any mention of
25 credit card on October -- I'm sorry -- on August the 1st to

1 August 30th for \$1,224? Why is that needed under cash
2 turnover slip?

3 A. Can you repeat the question, again?

4 Q. If you see in the middle page of page of this receipt.

5 A. Yes.

6 Q. Which says paid in full. You see it mentions credit card,
7 October 1 to October 30, 2012 --

8 A. Okay.

9 Q. -- and it says 1,224?

10 A. That's correct.

11 Q. If your only obligation is to turn over the cash to Mr.
12 Paru, why would the credit card deposits be part of an entry?
13 And, furthermore, why does the --

14 MR. ANDROPHY: Can he ask one question at a time?

15 MR. MOULINOS: I apologize. I apologize.

16 THE WITNESS: To be honest, I don't remember about
17 this credit card, 1,224. It was -- the credit card must be
18 credit card, it's not cash.

19 Q. I agree with you. The question is why would on a
20 turnover of cash to Mr. Paru as you said, there would be a
21 mention of credit card for one month, credit card deposits.
22 Do you have any idea?

23 A. I don't remember.

24 Q. And why is the sum precisely 3,500, if you know?

25 A. Probably wasn't a sum, and there was an add that makes

1 3,500.

2 Q. So you say it was just accidental?

3 A. I don't think so. I don't -- honestly, I don't remember.
4 I don't really have a date on here so I don't remember what
5 day was this made.

6 Q. The date is stated at the bottom, and it says from August
7 1 to August 30th, 2012, and it says paid in full. Do you see
8 that?

9 A. I see it.

10 Q. Why would it say paid in full and what payment was for?

11 A. Honestly, I don't remember what payment was in full on
12 this 3,500.

13 Q. Let me see if I can help you. Isn't this the first
14 month's exchange of numbers on the deal that was between you
15 and Mr. Alam and Hudson Side Cafe?

16 A. What do you mean?

17 Q. I mean wasn't there the deal, you were going to pay to
18 them 3,500, and you would run the show as you please, and this
19 was the first month's adjustment or what do you call it, the
20 first month's reconciliation?

21 A. We never agreed to pay them any money.

22 Q. But why is this 3,500 so precisely on the dot? And he
23 mentions the month of August 2012.

24 A. You see, on the cash, I could say, like I explained to
25 you, on the cash money that was because Paru used to go there

1 and get the money, you know; the credit card, I don't really
2 remember what was --

3 Q. By the way, Mr. Paru would come to the -- to the pizza
4 place, according to your testimony, between five and eight
5 p.m. daily; am I correct? That's what I heard before?

6 A. That's correct.

7 Q. Now, Mr. Carlos Oaxaca stated that this was a 3:00 p.m.
8 average time that he would leave. Which is correct, the 3:00
9 p.m. of Mr. Oaxaca or your five to 8:00 p.m.? Was Mr. Oaxaca
10 wrong?

11 A. I don't remember Mr. Oaxaca says Mr. Paru left at 3:00
12 p.m. Now, to that I know and that I remember, I know he used
13 to go there between five and seven, five and eight.

14 Q. I also believe I heard you said that Mr. Paru, while he
15 was there, he would also take pizza orders over the telephone.
16 Did you say that or is it my ears?

17 A. Yes, that's correct.

18 Q. He would?

19 A. Yes.

20 Q. I don't recall hearing Mr. Oaxaca say anything about
21 that?

22 MR. ANDROPHY: Objection.

23 MR. MOULINOS: Was he correct or were you correct?

24 THE WITNESS: Well, because --

25 MR. ANDROPHY: Objection. He's --

1 THE COURT: Can you ask a question?

2 MR. MOULINOS: Okay.

3 MR. ANDROPHY: He can only testify to what he's
4 testifying to.

5 BY MR. MOULINOS:

6 Q. Where did you learn making pizza, sir?

7 A. Since I came into this country, my first job was working
8 in a pizzeria as a cleaner. So from then I was cleaning and I
9 was learning how to make sauce and then dough, and from the
10 dough, this guy was teaching me about making pizza. That was
11 back in '90, '98.

12 Q. So from 1998 until when did you work making pizza?

13 A. I been working in a different, all the jobs that I've been
14 having, I've been working in the food business; restaurants,
15 delis, pizzerias.

16 Q. But the very last job before you ended up with Hudson Side
17 Cafe was delivering things?

18 A. Right. Yes.

19 Q. For four years you said?

20 A. No.

21 Q. How many?

22 A. For two years or a year.

23 Q. A year.

24 A. Two years.

25 Q. Two years?

1 A. Yes.

2 Q. And what was the last salary you were making gross at that
3 job prior to starting to work for the pizzeria?

4 A. I used to work kind of part-time jobs. The very last job
5 that I had was on this company, All Natural, I used to work
6 three days. They used to pay me \$300.

7 Q. \$300. And you were working only three days.

8 A. That's correct.

9 Q. And you were doing side jobs, too?

10 A. Kind of.

11 Q. And all together for a week, how much were you making,
12 roughly, before starting to work for the pizzeria?

13 A. Probably, 450.

14 Q. Four-hundred-fifty?

15 A. Yes.

16 Q. Why would you want to leave the 450 jobs that were easy
17 and come here and work 16 hours a day, six days a week, for
18 \$400?

19 A. Who told you it was easy?

20 Q. That was difficult work?

21 A. Oh, yes.

22 Q. More difficult than working for the pizzeria?

23 A. Well, because I have to buy lunch. I have to be working
24 on the raining days, hot days. Getting a risk of having an
25 accident; getting points on my license.

1 Q. So that's why you gave up all of that hard work to go end
2 up 16 hours a day at this pizzeria for \$400 a week, six days a
3 week now --

4 A. Well, --

5 Q. -- on your foot; am I correct?

6 A. That's correct.

7 Q. And that was easier than the jobs you had before?

8 A. Because Mr. Kabir told me that it started with \$400, and
9 the next month he will increase my salary.

10 Q. But you found out very quickly the salary never increased
11 by a penny?

12 A. Because when I spoke to him, he told me don't worry, I
13 will taking care of you. As soon as the business continue
14 raising, I will, you know, cover you up, whatever money I have
15 to pay you extra, I will definitely pay you.

16 Q. And it was Mr. Kabir that told you this or Mr. Paru
17 because --

18 A. Mr. Kabir at the very beginning, and after that, Mr. Paru.

19 Q. Why didn't you quit early on then?

20 A. Because I have a faith that the business will improve and
21 they will pay me more.

22 Q. Now, when you first started to work here, wasn't this when
23 the Health Department had shut down this place?

24 A. It was -- Health Department shut down the place before I
25 start working with them.

1 Q. Okay. And in June of 2012 is when you first were
2 propositioned to work for this place?

3 A. That's correct.

4 Q. And you saw it while it was open?

5 A. Yes.

6 Q. So you knew eventually that the place had shut down?

7 A. I don't know if the place is going to be shut down or no.

8 Q. But you knew it was closed for awhile, right?

9 A. After that. The place was closed, probably they shut down
10 in July.

11 Q. Do you mean to tell me that from June on you had no
12 contact with this place whatsoever?

13 MR. ANDROPHY: Objection. That's not what he said.

14 THE COURT: I'll permit the question.

15 MR. MOULINOS: Let me rephrase it, Judge, please.

16 BY MR. MOULINOS:

17 Q. From June to August the 10th, you had no idea what was
18 happening to this place?

19 A. I told you, middle of June we went there, we look at the
20 place, and after that I never went back to the place.

21 Q. Until?

22 A. The first day of my job in --

23 Q. So you're trying to tell me you never witnessed the place
24 being closed by them for whatever reason?

25 MR. ANDROPHY: Objection. I don't understand the

1 question.

2 THE COURT: Do you understand the question? Can you
3 answer that?

4 THE WITNESS: No. Can you repeat again?

5 BY MR. MOULINOS:

6 Q. Did you see this store shut down for any reason after June
7 2012?

8 A. I passed by because this is where I take the bridge to go
9 to Manhattan when I make my deliveries.

10 Q. And did you see it closed?

11 A. I saw the place was closed.

12 Q. And you had nothing to do with the reopening of the place,
13 correct?

14 A. Nothing to do with the reopening.

15 Q. How about Mr. Alam?

16 A. No.

17 Q. You people had nothing to do with renovating this place,
18 and putting big signs outside that said grand opening?

19 A. We don't.

20 Q. New management?

21 A. No.

22 Q. Did you put any signs outside of this store that said
23 under new management?

24 A. No.

25 Q. Did Mr. Alam do that?

1 A. No.

2 Q. So when you got back in August 2012, you found the place
3 open?

4 A. It was kind of open, but not to the public because it was
5 -- they will teach us what will be the proceed on the
6 business.

7 Q. And construction was going on, some renovations?

8 A. No.

9 Q. Nothing at all?

10 A. No.

11 Q. You saw the place just fixed up, correct?

12 A. That is correct.

13 Q. And you had nothing to do with the renovations?

14 A. No, sir. Why should I?

15 Q. I am asking you, I don't know. Did there come a time that
16 you and Mr. Paru or others upon your leaving the company had
17 another group of inventory made, another inventory sheet
18 written up?

19 A. That's correct, sir.

20 Q. Could you please tell us about it?

21 A. When I told Mr. Paru that I was about to leave because
22 they don't raise me, they don't raise my salary, and I'm
23 getting another job, I told him that I'm going to leave, I
24 want my money that they owe me. They owe me basically two
25 weeks -- it was kind of a week.

1 He told me, okay, in order for you to leave, you have to
2 make the inventory and I have to go over with you, make sure
3 how much is there because probably at that time he don't trust
4 me because I told him that I'm going to leave. So he wants to
5 make sure that, you know, whatever was in there.

6 Q. And, therefore, you people sat and entered into what is
7 called Defendant's Exhibit I-1, which is almost like the final
8 inventory?

9 A. That's correct.

10 Q. Now, do you see at the bottom of the page it says, deposit
11 for store, a thousand-five-hundred?

12 A. Thousand-five-hundred, yes.

13 Q. What does that mean?

14 A. Moot probably has to be a deposit.

15 Q. Could it be your deposit instead of the \$10,000 that had
16 been asked for, your deposit was only a thousand-five-hundred?

17 A. No. I don't think so. I think this was a deposit was
18 made to the bank.

19 Q. Oh. Do you see underneath, it says, counter, \$4,000?

20 A. Counter? Yes.

21 Q. What is that?

22 A. But if you see it was crossed off.

23 Q. I know it was crossed off. But why was it there in the
24 first place before it was crossed out?

25 A. I have no idea.

1 Q. Do you see underneath, salad bar, \$4,000?

2 A. That's correct. And you see --

3 Q. Why was this in the inventory sheet?

4 A. It's closed. So if it's closed, it's not part of the
5 inventory. That's what I think.

6 Q. I understand that, but somebody wrote it down, and you
7 were present. And next to it, it says 4,250, when these three
8 numbers are crossed out?

9 A. Yes.

10 Q. And to be exactly safe and accurate, isn't this your
11 handwriting on top of it?

12 A. Yes.

13 Q. Okay. So you wrote these numbers. You said one month
14 free, \$3,000; underneath you write, counter, \$4,000;
15 underneath you write salad bar, \$4,000. These three numbers
16 are crossed out, and a 4,250 substituted in its place. Do you
17 see it?

18 A. I see it.

19 Q. This is your handwriting. Would you explain to us what
20 happened with these three numbers that were crossed out?

21 A. Not the \$4,250; the three numbers that I crossed out I
22 believe was part of the inventory at the beginning.

23 Q. Isn't the real truth that this is how you settled the
24 request you had for them to pay one half of the renovation
25 cost for the salad bar and the counter and the one month free

1 accommodation you asked?

2 A. No.

3 Q. Mr. Paru rejected it, and you settled the amount at
4 4,250?

5 A. Not that I remember. We talk about any settled or
6 anything like that.

7 Q. All right. Let's go to the second page. It begins with
8 expenses, right?

9 A. Yes.

10 Q. Why would in an inventory sheet be a discussion about
11 expenses, such as, Con Edison phone, insurance, and inventory?
12 If you're only there working, what business do you have in
13 your own handwriting adjusting these numbers with Mr. Paru?
14 Could you explain it to me?

15 A. See, he told me to write all this, all these bills, put
16 them together.

17 Q. He told you to. And you just slavishly wrote them down?

18 A. Well, it's an order.

19 Q. It's an order.

20 A. And he's paying me.

21 Q. I see. So because he's paying you, you wrote these
22 numbers down to become adjustments, correct?

23 A. Well, that's correct.

24 Q. Adjustments of what?

25 A. When you say "adjustment". what do you mean with

1 adjustments?

2 Q. You tell me because you said, yes, they were meant to be
3 adjustments; to what?

4 A. Honestly, I didn't understand the question.

5 Q. Is it the question you don't understand or you don't have
6 an answer?

7 MR. ANDROPHY: Objection.

8 BY MR. MOULINOS:

9 Q. So now let's do this again: In your handwriting,
10 according to you, Mr. Paru directs you to write expenses --
11 Con Edison phone, insurance and inventory for 7,392?

12 A. That's correct.

13 Q. And you admit these were meant to be adjustments?

14 A. At that time I didn't understand you.

15 Q. Well, now, you do?

16 A. Yes. Because I don't see any --

17 Q. What exactly were they?

18 A. I don't see any adjustments here.

19 Q. But you admitted there were adjustments of some sort.

20 MR. ANDROPHY: Objection. Mischaracterization. The
21 witness never used the word "adjustments". Mr. Moulinos threw
22 it in there.

23 THE COURT: He did. He did. He did. But just ask
24 your next question, Mr. Moulinos.

25 BY MR. MOULINOS:

1 Q. Mr. Espinal, we go further down in the very middle of the
2 page, there is some checks there; do you see them?

3 A. Yes.

4 Q. Aren't these the checks that the company paid for you and
5 Mr. Alam as payroll that at the end of your separation, you
6 adjusted amongst yourselves as credit to you?

7 A. Can you repeat the question again?

8 Q. Well, you tell me what these middle entries mean: Check
9 1597; check 1620; check 1619.

10 A. Can you show me the --

11 Q. The very middle of Exhibit I-1. The second page.

12 A. Are you --

13 MR. MOULINOS: May I approach, Judge?

14 THE COURT: Are you on I-1?

15 MR. MOULINOS: Before he saw it --

16 THE COURT: Yes. Okay. You're on that page. That's
17 the right page.

18 THE WITNESS: Okay. Yeah. But you said there is
19 checks.

20 THE COURT: Check numbers.

21 MR. MOULINOS: The check numbers.

22 THE WITNESS: Oh, check numbers.

23 BY MR. MOULINOS:

24 Q. Do you know what these numbers were?

25 A. I was looking for the checks.

1 Q. No. Just tell me what these entries represent in your
2 handwriting.

3 A. I need to see the checks in order for you to answer it. I
4 need to see the checks in order for me to answer you what is
5 this amount paid to who. Because when you say check 1597 --

6 Q. Let me ask you this: Is this your handwriting?

7 A. It is.

8 Q. Then can you tell us why you wrote this and what was it
9 for?

10 A. At this time I don't remember. I need to see the check in
11 order for me to tell you why this check or who this check was
12 wrote to.

13 Q. I'm asking you if you may to help your recollection, would
14 these checks be the amounts that the corporation had paid for
15 your withholding tax, you and Mr. Alam, and you were
16 adjusting this at the very last meeting you had with Mr.
17 Paru?

18 A. You mean this check was paid to us?

19 Q. No. It was paid to the government as payroll tax for you.

20 A. Not that I remember or not that I know.

21 Q. Let's move down on that page. It says Health Department,
22 625; you see it?

23 A. Yes.

24 Q. Plus 275; plus 250. In your handwriting.

25 A. Not the numbers.

1 Q. Do you see them?

2 A. Yes. I see Health Department, but the numbers, they're
3 not mine. And when you say phone and insurance is not my
4 handwriting.

5 Q. Okay. Let's assume it's not yours, but the word "Health
6 Department" is yours?

7 A. Yes.

8 Q. So could it be that these were fines that you paid to the
9 City of New York for the violations that preexisted the
10 opening of the store; would that refresh your recollection
11 maybe?

12 A. I may have paid this Health Department, but that was part of
13 the -- of fair business.

14 Q. Why would you enter in the page things that had nothing to
15 do with the turnover of the cash to Mr. Paru and the
16 inventory?

17 A. Because my name --

18 Q. Why are we adjusting these numbers? Is there any idea you
19 may have?

20 A. No.

21 Q. Let's go further down.

22 A. Okay.

23 Q. Inventory is \$6,000; do you see that?

24 A. Yes. Uh-huh.

25 Q. Then it says underneath it, down; I presume it means down

1 payment of 3,000. Then in another entry says, Supreme, 1,100;
2 do you see that?

3 A. I see it.

4 Q. And the next number is 1,900; do you see that?

5 A. Yes.

6 Q. And do you see now on the front page that number reappears
7 as 1,926; do you see it?

8 A. Which front page?

9 Q. On the front page of this exhibit.

10 A. This?

11 Q. Do you see that?

12 THE COURT: No The first page.

13 THE WITNESS: I see 1,926.

14 BY MR. MOULINOS:

15 Q. Isn't this the money that Mr. --

16 A. And I see on the copy that you was telling me, it's 1,900.

17 Q. Correct. Isn't this that you people rounded off the
18 number and you received 1,920 when you left, and you severed
19 the relationship with this company?

20 A. No. We never received any cash. I never received any
21 cash when I left besides my salary.

22 Q. Oh. Then what is the significance of the
23 thousand-nine-hundred at the bottom of page two, also known as
24 1,926 at the top of page one? What --

25 MR. ANDROPHY: Objection. There hasn't been any

1 testimony that those two numbers are related.

2 THE COURT: Mr. Moulinos, please don't testify. Just
3 ask the question.

4 MR. MOULINOS: Okay.

5 BY MR. MOULINOS:

6 Q. All right. Let's then stick with the second page, the
7 bottom it says 1,900; do you see it?

8 A. Yes.

9 Q. The very last bottom, what they call the bottom line?

10 A. Uh-huh. I see it.

11 Q. What's the significance of the 1,900, sir, in your
12 handwriting?

13 A. Honestly, I don't remember. I mean I remember to write --
14 I see the numbers. I remember to write the numbers, but it
15 doesn't -- why the numbers was there.

16 Q. And, also, sir, if we now go for a mini-excursion to
17 Exhibit I-2, which is the last one; do you see that?

18 A. Yes.

19 Q. Is this a further inventory sheet where that was written
20 up upon your departing Hudson Cafe, Incorporated?

21 A. That is the inventory that I told you Mr. Paru told me
22 that I have to make in order to get paid my salary.

23 Q. And that was the \$400?

24 A. Excuse me?

25 Q. The \$400? Your salary, correct?

1 A. That's correct.

2 Q. So if you did not do this, they would not have paid you
3 the \$400; is that correct?

4 A. That's correct.

5 Q. So they were blackmailing you?

6 MR. ANDROPHY: Objection.

7 MR. MOULINOS: Sounds like it.

8 THE COURT: Mr. Moulinos.

9 MR. MOULINOS: I'm sorry for the word, but I don't
10 know what else to use. Let me rephrase it with your
11 permission, Judge.

12 THE COURT: Please do.

13 BY MR. MOULINOS:

14 Q. They were putting you on pressure; in other words, "they"
15 meaning Mr. Paru, that if you were not to fill these forms
16 out that way in your handwriting, they would refuse to pay you
17 \$400?

18 A. That's what he told me. You got to make the inventory --
19 he told me if you remember at the very beginning when you
20 start working with the three guys when you -- I want to make
21 you the same inventory so when you come, I'll take a look, and
22 then I could let you pay a week and we call it even.

23 Q. Now, if we go back to Exhibit A, the very first one, the
24 first inventory sheet --

25 A. Okay.

1 Q. -- concludes with 6,019 being turned over to you, correct?

2 MR. ANDROPHY: Objection. There has been no
3 testimony as to what that 6,019 represents.

4 MR. MOULINOS: I thought he testified it was
5 inventory turned over to him.

6 THE WITNESS: It was not to me personally. It was
7 the business.

8 THE COURT: It was inventory at the time it was
9 taken.

10 BY MR. MOULINOS:

11 Q. Oh, then, let me investigate more because I misunderstood
12 the answer, then. So may we go back to Exhibit A; 6,019 is
13 the conclusion of the inventory on Page 7 of Exhibit A. Do
14 you see that?

15 A. Yes.

16 Q. That means there were \$6,019 of merchandise turned over at
17 the time you started the business to work there, correct?

18 A. To work with them.

19 Q. To work with them; that's the amount of business inventory
20 that was turned over, correct?

21 A. Well, like I mentioned to you, numbers was not there, and
22 when I see this after, like I told you, I make a sign, I put
23 the signature without the totals.

24 Q. So you signed basically a blank document then?

25 A. Yes. And that was at the top, and there was only one

1 signature on one page.

2 Q. How about the last exhibit that we've been talking about
3 which is I-1 and I-2; that also was filled out by you in
4 blank?

5 MR. ANDROPHY: Which document is counsel referring
6 to?

7 MR. MOULINOS: I-1. The two-page-document with
8 adjustments that we've been talking about.

9 THE WITNESS: Yeah, it was. But there was no
10 signature on there.

11 BY MR. MOULINOS:

12 Q. I know, but it was your handwriting.

13 A. Well, yes.

14 Q. So was it accurate when it was drafted?

15 A. I think so, yes.

16 Q. Except for the lower part that had those three lines
17 crossed out; the one month free, the counter expense, and the
18 salad bar expense. Everything else is accurate, correct?

19 A. Yes.

20 Q. In your handwriting, it writes underneath, 12,500,
21 correct?

22 A. That's correct.

23 Q. Isn't this the amount you wanted as adjustment from Mr.
24 Paru, and he refused to acknowledge it?

25 A. What do you mean when you mean adjustment, what do you

1 mean with that?

2 Q. You tell me. What does this --

3 A. I don't understand the word "adjustment".

4 Q. Okay. Then help me understand. You're right. Maybe I'm
5 not correct. You wrote 12,500; what was the significance of
6 writing 12,500 on the first page of this document?

7 A. It was the add up on this inventory.

8 Q. Why would you want to add it up since it had nothing to do
9 with you and you were not purchasing a business or buying
10 inventory? What business did you have adding up numbers?

11 A. What day was this inventory made?

12 Q. You tell me when you wrote this page; you wrote it.

13 A. Yeah, but I don't remember. I don't remember what the
14 date.

15 Q. Fine. But do you remember writing 12,500?

16 A. Yes.

17 Q. What was the purpose of writing 12,500?

18 A. Honestly, at this moment, I don't remember why was that
19 add up, the main purpose on adding up these numbers.

20 Q. And why is it to the right of the three lines that are
21 crossed out, why does it have 4,250? What is the significance
22 of that?

23 A. Like I say, I don't remember because it doesn't -- it is
24 not a description of why 4,250 was there, ad like I told you,
25 this 4,250, I didn't write this. It's not my numbers.

1 Q. On the second page of this Exhibit I-1; do you see it, the
2 second page?

3 A. Yes.

4 Q. Do you see at the top, the last line where it says
5 "expenses", there is an inventory 1,900? On the top, the
6 group, that top group that says "expenses", the fourth entry
7 says "inventory 1,900".

8 A. Yes.

9 Q. Isn't this the 1,900 that is coming out of the inventory
10 sheet of Exhibit I-2?

11 A. You say I-2?

12 Q. I-2. Remember at the very bottom concluded with inventory
13 for 1,900?

14 A. What page are you on?

15 Q. Bottom of Page 2.

16 THE COURT: Is it I-2?

17 MR. MOULINOS: I-2 is --

18 THE WITNESS: I-2 has no dollars.

19 MR. MOULINOS: Oh, that's not his? Oh, I'm sorry.

20 Withdrawn, Your Honor. I have confused the witness. I
21 apologize. Withdrawn.

22 BY MR. MOULINOS:

23 Q. Okay. So for the last time, do you have any recollection
24 of what document I-1 means? What does it stand for?

25 A. Excuse me?

1 Q. Do you have any recollection as to why these two pages
2 were drafted?

3 A. Can I see them?

4 Q. Yeah. I-1, those two pages with all the numbers on them.
5 I-1 --

6 A. Excuse me?

7 THE COURT: I-1.

8 THE WITNESS: I-1?

9 MR. MOULINOS: Yeah. The one I have at the very top,
10 1,926, and then the 2,900 on the second page.

11 THE WITNESS: 1,926. Okay.

12 BY MR. MOULINOS:

13 Q. You see that document?

14 A. Yes.

15 Q. I still need to know why was this written for? Do you
16 recall?

17 A. You're talking about I-1?

18 Q. Yes. The two pages, a very detailed document.

19 A. I'm trying to remember.

20 Q. May I help you with your recollection?

21 A. Sure.

22 Q. Wasn't this drafted at the very last meeting you had with
23 Mr. Paru as reconciliation for the amounts that you owed and
24 he owed you? In parting your relationship?

25 A. We never have any agreement or any reconciliation like you

1 say.

2 Q. I see. So the best theory you have for us today is that
3 you wrote these because Mr. Paru told you if you don't write
4 these things up, you don't get \$400?

5 A. That's correct. On the inventory, on the last inventory.

6

7 MR. MOULINOS: Thank you. No further questions.

8 REDIRECT EXAMINATION

9 BY MR. ANDROPHY:

10 Q. Mr. Espinal, could you look at Defendant's Exhibit A,
11 please. Can you clarify what was on this sheet when you
12 signed it? I'm sorry. I'll wait for you to find the exhibit.

13 MR. ANDROPHY: I'm sorry. May I assist?

14 THE COURT: Yes, go ahead.

15 MR. ANDROPHY: I'm just going to make sure you have
16 all the pages.

17 BY MR. ANDROPHY:

18 Q. Your signature is on the top page; is that correct? Top
19 of the first page?

20 A. That's correct.

21 Q. What was on this page when you signed?

22 A. It was just the quantities under of each product that we
23 count in the basement, which it took the workers and myself.

24 Q. So, for example, the first line where it says one Snapple,
25 and then it goes on. Can you tell us what portions of that

1 line of that row was on the page when you signed it?

2 A. Well, it was the numbers, nine case, and then the other
3 guy -- and there was four, five, and I just did the check
4 mark.

5 Q. Okay. Was the 165-fifty on the page?

6 A. No. All the numbers were probably wrote after.

7 Q. Okay. And is that the same for the rest of the pages in
8 this exhibit?

9 A. That's correct.

10 THE COURT: Can I suggest that I let him look at the
11 original inventory? It might assist because that is not a
12 color copy.

13 MR. ANDROPHY: Certainly.

14 THE COURT: And the reason I'm showing him that is is
15 it fair to say that you're saying that the numbers in red
16 weren't there when you signed it?

17 THE WITNESS: All the numbers in red, they weren't
18 there.

19 THE COURT: How about the other numbers?

20 THE WITNESS: The ones with the blue were there, like
21 1980 --

22 THE COURT: Okay.

23 THE WITNESS: You see, there's two inks here. There
24 is blue, and there is a black.

25 THE COURT: Were the black ink numbers there?

Proceedings

204

1 THE WITNESS: Yes.

2 THE COURT: When you signed it?

3 THE WITNESS: No. The black.

4 THE COURT: So the red ink --

5 THE WITNESS: The red, too, wasn't there. You can
6 tell there is a lot of different -- there's two colors in
7 there. Yes. And the last, the total, six-thousand-nine,
8 nineteen-and-50 weren't there. It was in black ink.

9 And if you see my check mark is in the blue with my
10 signature.

11 BY MR. ANDROPHY:

12 Q. Were you ever shown a copy of this document with those red
13 ink entries before today or before this litigation?

14 A. No.

15 Q. Defendant's attorney showed you several checks that you
16 signed. Did you sign any checks after October of 2012?

17 A. After October 2012? I don't think I did sign any checks.
18 I think the last check that I signed was the last statement
19 the defendants showed me, which was for the month of up to, I
20 believe, up to September, October -- end of October.

21 Q. Right.

22 A. From November and further down, I didn't. Not that I
23 remember.

24 Q. Did you sign all the checks for the business in October?

25 A. Not all of them. Few of them because they had a few

1 different signatures on some of the checks. Like, for
2 example, check 1826, not my signature. Check 1828 is not my
3 signature. Check 1827 is not my signature.

4 Q. I'm sorry. Are you referring to 1626?

5 A. Oh, I'm sorry, 1626.

6 Q. Do you know whose signature that is?

7 A. Honestly, I don't.

8 Q. Do you know who those checks are made out to?

9 A. No. It has a name, Paul, but I don't really know.

10 Q. Did you ever make payments to Paul, that's listed in those
11 checks?

12 A. I think I did make one check. I don't remember if it was
13 Paul or somebody else. Nope. I don't really know the person
14 Paul, and like I said, that is not my signature, including the
15 first check, which is 1696.

16 Q. Is that 1596?

17 A. Or 1596.

18 Q. Okay. Do you know who signed that?

19 A. No. It looks like it's the same that signed those other
20 three checks.

21 Q. Okay. Turning to Defendant's Exhibit H-2.

22 A. Okay.

23 Q. Do you know who prepared this document?

24 A. I did prepare the amounts on the cash and credit card.

25 Q. Okay. Do you know who wrote at the bottom from 8/1 to

Proceedings

206

1 8/30/'12?

2 A. I believe it was me.

3 Q. Okay. Do you know who wrote "paid full"?

4 A. Paid in full -- no. But seems to be my handwriting, so it
5 must be me.

6 (Continues on the next page.)

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1 (Continuing)

2 Q Turn to Exhibit I-1.

3 A Okay.

4 Q Can you clarify, starting with the first page, which
5 things you wrote on this document? So, start with on the
6 first page where it says 1926, did you write that?

7 A No, that was not my numbers?

8 Q Do you know who wrote that?

9 A No, not even the top one, the 1347.

10 Q Do you know who wrote that?

11 A No.

12 Q Okay. Now, starting where it says cash money and down,
13 did you write those?

14 A I did.

15 Q The notations to the side where it says Paru \$900 and
16 Paru \$200, and there's a mark and some things crossed out on
17 the side, do you know who wrote those?

18 A No. I think it was -- no, I don't remember who was it.

19 Q Okay.

20 MR. MOULINOS: Judge, do you want us to continue
21 tomorrow? That's okay if you want.

22 THE COURT: That might be a good idea.

23 If you just have a few questions, I think I can
24 make it.

25 MR. ANDROPHY: It's going to be less than five

1 minutes.

2 THE COURT: I think I'll be fine.

3 MR. ANDROPHY: Okay, thank you, Your Honor.

4 Q In the bottom section starting with deposit store, what
5 did you write there?

6 A One thousand five hundred.

7 Q Okay. And the numbers to the side of that, did you write
8 those?

9 A No.

10 Q On the second page, at the top where it says eleven five
11 forty-five, did you write that?

12 A No, that's not my number.

13 Q Where it says 9,185 on the top in the box that's
14 partially written on, did you write that?

15 A No.

16 Q For expenses, did you write that section?

17 A Expenses, I did.

18 Q Okay. And then, the next section, with check numbers,
19 did you write that?

20 A I did.

21 Q And then, underneath that, in that bottom section, can
22 you tell us which portions you wrote and which portions you
23 did not write?

24 A The phone insurance and -- phone, insurance and the
25 numbers next Health Department I didn't wrote.

1 Q Okay.

2 A Even the numbers 17 -- 1,7934, I didn't wrote those
3 numbers.

4 Q Okay.

5 MR. ANDROPHY: I have no further questions for the
6 witness.

7 MR. MOULINOS: No further questions, Your Honor.

8 THE COURT: Okay.

9 We will conclude for the day and start at 10:00.

10 MR. MOULINOS: 10:00 o'clock tomorrow, 10:30, Judge?
11 What's better for you?

12 THE COURT: 10:00 is fine.

13 MR. MOULINOS: Did the plaintiff rest so far?

14 MR. ANDROPHY: Yes. I think for the efficiency
15 purposes -- yes, plaintiffs rest. We reserve the right to
16 call rebuttal.

17 MR. MOULINOS: Okay, thank you.

18 THE COURT: Okay.

19 MR. ANDROPHY: Mr. Alam is not going to be able to
20 be here tomorrow due to work. He's not a witness for
21 tomorrow, so I don't anticipate that's a problem. I just want
22 to make sure that the Court and Mr. Moulinos are aware of
23 that.

24 THE COURT: That's fine with the Court.

25 Mr. Moulinos?

Proceedings

210

1 MR. MOULINOS: I'm sorry?

2 MR. ANDROPHY: Mr. Alam is not going to be here
3 tomorrow.

4 MR. MOULINOS: I have no problem, no problem.

5 MR. ANDROPHY: Okay.

6 MR. MOULINOS: No problem.

7 MR. ANDROPHY: Thank you.

8 MR. MOULINOS: In fact, if you want to excuse the
9 others, I'm okay, too. No objection.

10 MR. ANDROPHY: Okay.

11 MR. MOULINOS: I know people got to work.

12

13 (Matter adjourned to Wednesday, February 25th at
14 10:00 a.m.)

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25

Proceedings

211

INDEX

WITNESS:

PAGE:

MOHAMMED KABIR

DIRECT EXAMINATION

4

CROSS-EXAMINATION

36

CARLOS OAXACA

DIRECT EXAMINATION

43

CROSS-EXAMINATION

54

REDIRECT EXAMINATION

91

HALIBUL ALAM

DIRECT EXAMINATION

95

CROSS-EXAMINATION

112

RECROSS-EXAMINATION

134

JUAN ESPINAL

DIRECT EXAMINATION

136

CROSS-EXAMINATION

152

REDIRECT EXAMINATION

202

EXHIBITS

7

132

* * * *

Proceedings

212

C E R T I F I C A T E

I, Wendy C. Ricard, Official United States Court
Reporter in and for the Eastern District of New York, do
hereby certify that the foregoing proceedings were taken
down in shorthand at the time and place aforesaid,
transcribed under my personal direction and supervision,
and that the preceding pages represent a true and correct
transcription, to the best of my ability and
understanding.

Wendy C. Ricard, RPR
Official U.S. Court Reporter